



**Issue Date: 22 September 2010**

**BALCA Case No.: 2010-TLN-00076**

ETA Case No.: C-10211-50689

*In the Matter of:*

**DEAD SEA LEGEND LLC d/b/a DEAD SEA LEGEND,**  
*Employer*

Certifying Officer: William L. Carlson  
Chicago National Processing Center

Before: **WILLIAM S. COLWELL**  
Associate Administrative Law Judge

**DECISION AND ORDER**  
**AFFIRMING DENIAL OF CERTIFICATION**

This case arises from a request for review of a United States Department of Labor Certifying Officer's ("the CO") denial of an application for temporary alien labor certification under the H-2B non-immigrant program. The H-2B program permits employers to hire foreign workers to perform temporary nonagricultural work within the United States on a one-time occurrence, seasonal, peakload, or intermittent basis. *See* 8 U.S.C. § 1101(a)(15)(H)(ii)(b); 8 C.F.R. § 214.2(h)(6); 20 C.F.R. Part 655, Subpart A (2009).

**Statement of the Case**

On July 30, 2010, the Department of Labor's Employment and Training Administration ("ETA") received an application for temporary labor certification from Dead Sea Legend LLC d/b/a Dead Sea

Legend (“the Employer”). AF 67-77.<sup>1</sup> In its application, the Employer requested certification for ten “Retail Salespersons” from October 1, 2010 until February 1, 2011. AF 67.

On August 4, 2010, the CO issued a Request for Further Information (“RFI”). AF 61-66. The CO noted the pre-filing recruitments at 20 C.F.R. § 655.15 and requested that the Employer provide a copy of its job order along with all of its newspaper advertisements as proof that it complied with the H-2B recruitment requirements. AF 63-64.

On August 10, 2010, the Employer responded to the RFI. AF 40-60. In its response, the Employer wrote:

To evidence that the Employer has met the requirement of placing two-day newspaper advertisements, we have enclosed herein a copy of the tear-off sheets for both days and the payment receipt indicating that the advertisements were placed on June 13, 2010 and June 16, 2010. . . . We also attached a copy of the job order which were posted at the website of [the] Pennsylvania Workforce Exchange (“SWA”).

AF 41. The Employer included the proof of its newspaper advertisements as well as a copy of its job order although neither mentioned the work hours or days. AF 100.

On August 20, 2010, the CO denied the Employer’s application for temporary labor certification. AF 35-39. Citing to 20 C.F.R. §§ 655.15(e)(2) and 655.15(f)(3), the CO found<sup>2</sup> the Employer’s newspaper advertisements and job order failed to “contain the work hours and days; expected start and end dates of employment; and whether or not overtime would be available.” AF 61. Having found that the Employer failed to satisfy pre-filing recruitment, the CO denied the Employer’s application. The Employer’s appeal followed.

### **Discussion**

When conducting domestic recruitment under the H-2B program, the Employer must place an active order with the SWA as well as place newspaper advertisements. 20 C.F.R. § 655.15. The job order and the newspaper advertisements must contain: “The work hours and days, expected start and end dates of employment, and whether or not overtime will be available.” 20 C.F.R. § 655.17.

---

<sup>1</sup> Citations to the 77-page appeal file will be abbreviated “AF” followed by the page number.

<sup>2</sup> The CO cited other deficiencies, which will not be addressed on appeal.

The Employer's newspaper advertisements and job order failed to include the work hours and days. The Employer argued in its request for review that the SWA's system did not allow the Employer to "alter the data entry options." AF 3. However, the Employer bears the burden of proving that labor certification is appropriate and that all recruitment requirements were met. In the present instance, the Employer has failed to prove that it complied with the H-2B program, or in the alternative, that the SWA's website prohibits the Employer from compliance. Nothing in the record indicates that the Employer attempted to correct its problem with the SWA either before or after filing its application. Further, nothing prohibited the Employer from ensuring that its newspaper advertisements contained the appropriate content to satisfy the regulatory requirements. Ultimately, the Employer failed to adequately satisfy the pre-filing recruitment requirements, and therefore, the CO properly denied certification.

**Order**

In light of the foregoing, it is hereby **ORDERED** that the Certifying Officer's decision is **AFFIRMED**.

For the Board:

A

**WILLIAM S. COLWELL**  
Associate Chief Administrative Law Judge

Washington, D.C.  
WSC:AH