



Issue Date: 06 August 2010

BALCA Case No.: 2010-TLN-00070

ETA Case No.: C-10168-50298

In the Matter of:

INDEPENDENT LABOR SERVICES, LLC,
Employer

Certifying Officer: William L. Carlson
Chicago National Processing Center

Before: **WILLIAM S. COLWELL**
Associate Chief 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 June 17, 2010, the Department of Labor's Employment and Training Administration ("ETA") received an application for temporary labor certification from Independent Labor Services, LLC, ("the

Employer”) requesting certification for 60 “Forest and Conservation Workers” from October 1, 2010, until June 14, 2011. AF 115.¹ The Employer submitted with its application a copy of its Farm Labor Contractor Certificate (“FLC”) with an expiration date of April 20, 2011. AF 158. The FLC showed that the Employer was authorized for transportation and listed ten approved vehicles. *Id.* The authorization for the individual vehicles expired on November 12, 2009 and December 3, 2009. *Id.* In addition, the Employer submitted four Farm Labor Contractor Employees certificates (“FLCE”), all with an expiration date of June 24, 2010, except for one FLCE, which expired on April 30, 2011. AF 159-162.

On June 21, 2010, the CO issued a *Request for Further Information* (“RFI”), in which he found the Employer failed to submit proof of an FLC that listed vehicles currently authorized to transport the workers. AF 113. The CO also stated that three of the FLCE certificates were not valid when the Employer filed its application. *Id.* The CO required the Employer to submit an “FLC certificate that is current and valid with additional vehicles and additional FLCE certificates that are current and valid and will support the transportation of sixty (60) workers being requested.” *Id.*

On June 25, 2010, the Employer submitted a response to the RFI. AF 78-109. The Employer explained that many of its FLCE certificate holders were H-2B workers, so their certificates were only valid during their employment. AF 99. Thus, “if these workers return to work for [the Employer] next season, [the Employer] will submit the proper paperwork required to renew their licenses.” *Id.* As to the authorized vehicles on the FLC certificate, the Employer stated that it had submitted the paperwork in order to get an updated vehicle registration, however, the Employer has yet to receive the new authorization. AF 100.

On July 8, 2010, the CO issued a *Final Determination* denying the Employer’s application. AF 73-77. The CO noted that the special procedures relating to tree-planting and related reforestation occupations outlined in Training and Employment Guidance Letter 27-06, Attachment A, Section II (June 12, 2007) (“TEGL 27-06”) applied to the Employer’s application pursuant to 20 C.F.R. § 655.3. AF 75. Accordingly, the CO asserted that although the Employer had an FLC certificate, it did not have any authorized vehicles in order to transport workers given that the vehicles listed on his FLC certificate

¹ Citations to the 163-page Administrative File will be abbreviated “AF” followed by the page number.

expired in November/December 2009. AF 76. While the CO noted that the Employer had attempted to update the registration, the CO found that this response was inadequate because the TEGL required the registration to be current at the time of filing. *Id.* Further, the CO found the Employer's assurances that the workers would obtain FLCE certificates at a later date to be insufficient because the FLCE certificates must also be current at the time of application. AF 77. The CO denied certification based on the Employer's failure to provide an FLC certificate with authorized vehicles sufficient to transport 60 workers. The Employer's appeal followed.

Discussion

On January 18, 2009, new regulations governing ETA's processing of H-2B visa applications took effect. *See* 73 Fed. Reg. 78,020 (Dec. 19, 2008). 20 C.F.R. § 655.3 (2009) indicates that ETA's special procedures for processing applications requesting reforestation workers remained in effect after January 18, 2009. As the CO observed, TEGL 27-06 contains ETA's procedures for processing such applications. ETA has published the guidance letter to its website at <http://wdr.doleta.gov/directives/attach/TEGL/TEGL27-06.pdf>. Section 2.A of TEGL 27-06 requires that an employer qualifying as an FLC must "provide proof of *current* registration, including proof of the registration of any Farm Labor Contractor Employees . . . at the time of filing." (emphasis added).

The parties do not dispute that the Employer qualifies as an FLC or that the Employer needed an FLC certificate that included authorized vehicles in order for the Employer to transport workers. The only issue is whether the FLC/FLCE certificates must be current at the time the application is filed. Section 2.A of TEGL 27-06 clearly requires that the Employer submit proof of *current* registration. *See Triple T Logging*, 2009-TLN-00081 (September 10, 2009) (holding that an Employer must satisfy the registration requirements at the time of filing, or at the latest, in response to the RFI). In its request for review, the Employer states that the updated registration is pending, and that because of its worker situation, only one current FLCE certificate has been obtained. Not only did the Employer fail to submit the current documentation at the time of application and later in response to the RFI, but the Employer has still failed to obtain the proper registration. Accordingly, the CO's decision to deny certification is affirmed.

Order

For the foregoing reasons, it is hereby **ORDERED** that the Certifying Officer's decision is **AFFIRMED**.

For the Board:

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WILLIAM S. COLWELL
Associate Chief Administrative Law Judge

Washington, D.C.
WSC:ARH