



**Issue Date: 14 July 2010**

**BALCA Case No.: 2010-TLN-00067**

ETA Case No.: C-10124-50044

*In the Matter of:*

**ROYAL SUNRISE ADULT CARE HOME,**  
*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 May 4, 2010, the Department of Labor's Employment and Training Administration ("ETA") received an application for temporary labor certification from Royal Sunrise Adult Care Home ("the

Employer”). AF 41-46.<sup>1</sup> The Employer requested certification for one “Personal and Home Care Aide” from April 1, 2010, until April 1, 2011. AF 41. On the Employer’s application, it failed to indicate what type of recruitment had taken place in the designated “Recruitment Information” section. AF 45.

On May 7, 2010, the CO sent a *Request for Further Information* (“RFI”). AF 34-40. The CO identified multiple deficiencies, only one of which is relevant to this appeal. *Id.* Citing to 20 C.F.R. §§ 655.20(a) and 655.15(j), the CO required the Employer to submit a completed recruitment report in accordance with the H-2B regulations. Specifically, the CO noted that the recruitment report must be prepared, signed and dated “no fewer than 2 calendar days after the last date on which the job order was posted and no fewer than 5 calendar days after the date on which the last newspaper or journal advertisement appeared.” AF 40.

On May 17, 2010, the Employer responded to the RFI. AF 14-33. In its response, the Employer wrote:

The recruitment of a foreign worker, someone [that] we know, is very critical for us as a family. The homecare business is located [in the Employer’s home]. . . . Since this employee will be living in my home, for my safety and peace of mind, I will hire only someone who I can truly trust, and in my culture, that would generally be [a family member]. . . . I would be very hesitant to hire a stranger off the street. And I don’t have any other family members in the U.S. who [could work for the Employer]. . . . Recruitment activity ha[s] been informal, word of mouth, in search of a family member or very close relative who would be available for the job. None was found.

AF 14.

On June 4, 2010, the CO denied the Employer’s application for multiple deficiencies. AF 7-13. Citing to 20 C.F.R. §§ 655.20(a) and 655.15(j), the CO asserted that the Employer failed to submit a recruitment report. Accordingly, the CO found that the Employer’s response to the RFI also did not satisfy the regulatory requirements for a recruitment report found at 20 C.F.R. § 655.15(j). Having determined that the Employer failed to submit the appropriate documents, the CO denied the Employer’s application for labor certification. The Employer’s appeal followed.

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<sup>1</sup> References to the 46-page appeal file will be abbreviated “AF” followed by the page number.

### Discussion

The H-2B regulations require that Employer seeking temporary labor certification to file “ a copy of the recruitment report” with the Application for Temporary Employment Certification. 20 C.F.R. § 655.20(a). Accordingly, the Employer must “prepare, sign, and date” the recruitment report “no fewer than 2 calendar days after the last date on which the job order was posted and no fewer than 5 calendar days after the date on which the last newspaper or journal advertisement appeared.” 20 C.F.R. § 655.15(j).

The regulations require Employers to file a recruitment report after conducting various stages of recruitment, including advertisements placed in newspapers and job orders placed with the State Workforce Agency (“SWA”). Not only did the Employer fail to adequately conduct recruitment by failing to place advertisements in the newspaper or contacting the local SWA, it also failed to submit a recruitment report. Because the Employer failed to submit the required documentation, 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:

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