



Issue Date: 08 October 2010

BALCA Case No.: 2010-TLN-00081

ETA Case No.: C-10224-50827

In the Matter of:

TOTAL QUALITY COMMUNICATIONS, 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 August 12, 2010, the Department of Labor's Employment and Training Administration ("ETA") received an application for temporary labor certification from Total Quality Communications,

LLC, (“the Employer”). AF 74-82.¹ On August 18, 2010, the CO issued a *Request for Further Information* (“RFI”). AF 63-73. In the RFI, the CO identified multiple deficiencies, only one of which will be addressed on appeal. Citing to 20 C.F.R. §§ 655.20(a) and 655.15(j), the CO noted that the Employer must have “prepared, signed, and dated a written recruitment report no fewer than two calendar days after the last date on which the job order was posted and no fewer than five calendar days after the date on which the last newspaper or journal advertisement appeared.” AF 72. Accordingly, the CO stated that the Employer had failed to submit a recruitment report, and therefore he required the Employer to submit a recruitment report which complied with the regulations. AF 73.

On August 30, 2010, the Employer submitted a response to the RFI. AF 41-62. The Employer stated that he was “ignorant[t]” of the process. AF 50. Other than a heading entitled “**#7 Failure to submit a recruitment report**,” the Employer does not mention its failure to submit its report nor does the response contain the report (emphasis in original). AF 49.

On September 10, 2010, the CO issued a *Final Determination* denying the Employer’s application on multiple grounds, only one of which will be addressed on appeal. AF 24-38. Again citing 20 C.F.R. §§ 655.20(a) and 655.15(j), the CO noted that the Employer failed to submit a recruitment report. AF 37-38. The CO noted the Employer’s RFI response, but stated that the Employer failed to cure the deficiency because it did not submit the recruitment report. AF 38. As a result, the CO denied the Employer’s application. The Employer’s appeal followed.

Discussion

To obtain certification under the H-2B program, an applicant must submit a recruitment report that complies with 20 C.F.R. § 655.15(j). *See* 20 C.F.R. § 655.20. Accordingly, the regulations require that a recruitment report must be prepared “no fewer than two calendar days after the last date on which the job order was posted and no fewer than five calendar days after the date on which the last newspaper or journal advertisement appeared.” 20 C.F.R. § 655.15(j).

¹ References to the 82-page appeal file will be abbreviated with an “AF” followed by the page number.

The Employer failed to submit a recruitment report as required by the regulations. In fact, a review of the record reveals that the Employer failed to mention his recruitment report either in his response to the RFI or in his request for review.² Because the Employer failed to submit a recruitment report, 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

² In his request for review, he alleges that the CO failed to read his RFI response. Yet despite the Employer's assertions, the denial letter clearly identifies that the CO read the Employer's response and considered it before denying the Employer's application.