

**ISSUE DATE: 05 JUNE 2015**

BALCA CASE NO: 2015-TLN-00052

ETA CASE NO: H-400-15110-86090524

*In the matter of:***PELICAN LAKES, INC.****Decision and Order Affirming Denial**

Pelican Lakes LLC (Pelican) objects to the Certifying Officer's denial of a temporary alien labor certification application it made under the H-2B visa program. This proceeding at the Board of Alien Labor Certification Appeals (BALCA) reviews the Certifying Officer's action;<sup>1</sup> a judge may affirm a denial; direct the Certifying Officer to grant the application; or remand the matter for more action.<sup>2</sup> Pelican requested an administrative review of the Final Denial<sup>3</sup> the Certifying officer entered on May 26, 2015. The evidence in a review is limited to the record made before the Certifying Officer. Pelican advised my assistant that its Request for Administrative Review dated May 27, 2015 was its final position on this matter and that it was not going to retain counsel to represent it or file anything more in this appeal.

The Certifying Officer denied the application for four categories of shortcomings, some of which involved sub-parts. The Certifying Officer's decision that Pelican failed to satisfy its duty to recruit U.S. workers for the job before turning to aliens as temporary employees, and to do so before it filed its application, is indisputably shown in the record. The job advertisement it published omitted some of the minimum information the H-2B program regulations require. The application therefore failed to demonstrate that no qualified U.S. worker was capable of performing Pelican's work. That alone is grounds to deny the

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<sup>1</sup> Admin. R. P41-50; 20 C.F.R. § 655.33(a) (authorizing review).

<sup>2</sup> 20 C.F.R. § 655.33(e).

<sup>3</sup> Admin. R. at P41.

application. There is no need to reach the other deficiencies the Certifying Officer listed. Pelican should not assume because I do not address them, that I believe the Certifying Officer was wrong about those matters.

Pelican operates in several divisions. It operates a golf course, a sports bar, a wedding/event facility, and maintains the landscape of a residential facility near the City of Windsor in northern Colorado. The property either abuts or encompasses a private lake.

Pelican seeks by this application to bring one worker temporarily to the United States as a nonimmigrant from May 15, 2015 to October 9, 2015. The person would perform a full time job created through an amalgam of unrelated maritime and non-maritime duties. The employee will serve as the ship's engineer and backup captain for a houseboat of undisclosed size, said to accommodate 40 people; at some places in the application papers Pelican refers to it as yacht. The employee would maintain the vessel's engines and systems and sometimes operate the boat on a single lake. This would take about 30% of work hours.<sup>4</sup> The employee also serve as a "Property Caretaker/Landscaper" who would do landscaping on golf and community areas, as well as on private property, for the other 70% of the time.<sup>5</sup> Both aspects of the job are characterized as seasonal. The boat at Pelican's recreational facility operates from May to October intermittently, for wedding parties, fundraising, and corporate events. No landscaping is done from mid- October to early May due to icy weather and snowfalls that average 59 inches annually; winter weather precludes golf, use of its swimming pool and of the lake.

The administrative record shows that the advertisement of the job opening to potential workers in the United States failed to include information the H-2B program regulations demand. The applicant is obligated to show that the advertisements it made to find a U.S. worker contain no less than that information.

The Secretary's regulations at 20 C.F.R. §655.17(f), state that the text of "all advertising" Pelican relies on as efforts to recruit U.S. workers for the job opportunity "must contain" the work hours and days, expected start and end dates of employment, and whether or not overtime will be available." The newspaper ad it submitted also ran afoul of requirement that "all advertising must contain the wage offer, or in the event that

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<sup>4</sup> Admin. R. at P23.

<sup>5</sup> Admin. R. at P23. See also P29 at ¶ 7: "The employer's job duties represent a combination of the occupation in item F.3 and 37-3011 - Landscaping and Groundskeeping Workers."

there are multiple wage offers, each of which must not be less than the highest of the prevailing wage, the Federal minimum wage, state minimum wage, or local minimum wage applicable throughout the duration of the certified H-2B employment.” 20 C.F.R. §655.17(g). The employer failed to overcome this deficiency when the Certifying Officer brought it to Pelican’s attention. The tear sheet Pelican offered in the application for the ad it ran in a local newspaper known as “The Tribune” includes none of this information.<sup>6</sup> Job order 6104903 Pelican placed with the State of Colorado’s Department of Labor & Employment on March 24, 2015 gave no start date.<sup>7</sup>

### **Order**

These deficiencies leave the application wanting.<sup>8</sup> The Certifying Officer’s denial is correct, and affirmed.

William Dorsey  
Administrative Law Judge

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<sup>6</sup> The ad, which ran on more than one day, is found at Admin. R. P36, P37, & P38.

<sup>7</sup> Admin. R. at P34, P59.

<sup>8</sup> Admin. R. P66–72.