



Issue Date: 30 March 2015

BALCA Case No.: 2015-TLN-00033
ETA Case No.: H-400-15002-670317

In the Matter of:

BODA BORG CORPORATION dba BODA BORG
Employer

ORDER GRANTING REQUEST
TO WITHDRAW APPEAL

On January 21, 2015, Employer applied for temporary employment certification through the H-2B program to fill positions for “Reality-Gaming Quest Designers/Builders.” (AF 121-135).¹ With its application, Employer also submitted a copy of its “Recruiting Report.” (AF 134-135). On January 28, 2015, the CO issued a Request for Further Information. The CO stated it was unable to make a final determination on the application, and it requested further information regarding Employer’s recruitment methods and recruitment report. (AF 116-120).

On February 4, 2015, Employer responded to the CO’s request for additional information via email. Employer provided six attachments, which included written explanations; copies of the Job Order; newspaper tear sheets and receipts; a revised recruitment report; and a corrected ETA Form 9142. (AF 13-115).

On February 20, 2015, the CO made its final determination regarding Employer’s H-2B application. The CO denied Employer’s application for temporary labor. (AF 8-12). On February 24, 2015, Employer submitted a request for administrative review to the Board of Alien Labor Certification Appeals (“BALCA”) appealing the CO’s final determination in the above-captioned H-2B matter. On March 2, 2015, BALCA docketed the appeal and issued a first Notice of Docketing. The CO assembled the appeal file and transmitted it to BALCA, the Employer, and the Associate Solicitor for Employment and Training Legal Services (“the Solicitor”) in accordance with 20 C.F.R. § 655.33(b)² on March 25, 2015.

¹ In this Order, AF is an abbreviation for “Appeal File.”

² All citations to 20 C.F.R. Part 655 refer to the Final Rule promulgated in 2008. The regulations found at 20 C.F.R. Part 655, Subpart A (2009), which were published in the Federal Register on December 19, 2008 (“2008 Rule”), 73 Fed. Reg. 78020, apply to this case. The Department of Labor (“DOL”) indefinitely delayed implementation of the Final Rule published on February 21, 2012 (“2012 Rule”), 77 Fed. Reg. 10038, after the United States District Court for the Northern District of Florida issued a preliminary injunction in *Perez v. Perez*, No. 3:14-cv-682 (N.D. Fla., Mar. 4, 2015), enjoining DOL from implementing or enforcing it. *See* 77 Fed. Reg. 28764 (May 16, 2012) (announcing the continuing effectiveness of the 2008 Rule “until such time as further judicial or other action suspends or otherwise nullifies the order in the Bayou II litigation”); *Bayou Lawn & Landscape Services v. Solis*, Case 3:12-cv-00183, Order at 8 (N.D. Fla. Apr. 26, 2012) (issuing order temporarily enjoining DOL from

On March 12, 2015 the CO requested that further proceedings be suspended indefinitely in light of the decision in Perez v. Perez, No. 3:14-cv-682 (N.D. Fla., Mar. 4, 2015). By Order dated March 13, 2015, Acting Chief Administrative Law Judge Stephen R. Henley, the Acting Chair of BALCA, stayed all pending H-2B temporary labor certification matters, including the above-captioned matter. On March 19, 2015, the Certifying Officer filed a status report stating that the district court had granted the Secretary of Labor's motion requesting a stay of the district court's injunction order until and including April 15, 2015. Further, the Certifying Officer suggested that the stay be lifted and that "reasonable briefing schedules of a minimum of five days" be set. Thereafter, on March 20, 2015, Judge Henley lifted the stay.

A second Notice of Docketing Following Lift of Stay and Expedited Briefing Schedule was issued on March 26, 2015. Because H-2B appeals are expedited, and in accordance with 20 C.R.F. § 655.33, the parties were given a brief due date of April 1, 2015. On March 27, 2015, however, Employer submitted a Request to Withdraw Pending Appeal, stating that as a result of the delays in the case, Employer no longer would be able to meet the time-sensitive business obligations that necessitated the need for H-2B labor. Consequently, due to Employer's request to withdraw its request for administrative review, the instant case is **DISMISSED**.

ORDERED this 30th day of March, 2015, at Covington, Louisiana.

LEE J. ROMERO, JR.
Administrative Law Judge

Covington, LA

implementing or enforcing the 2012 Rule), *affirmed* by 713 F.3d 1080 (11th Cir. 2013); *see also Bayou Lawn & Landscape Services v. Solis*, Case 3:12-cv-00183 (N.D. Fla. Dec. 18, 2014) (vacating the 2012 Rule and permanently enjoining DOL from enforcing it).