

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 14 January 2015

BALCA Case No.: 2015-TLN-00012
ETA Case Nos.: H-400-14328-238125

In the Matter of:

EJ MCCOY ENTERPRISES LLC,
Employer.

Appearances:

Lori A. Whitten, Action Visa Assistance, Wylie, TX
For the Employer

Jeffrey S. Nesvet, Esq., Office of the Solicitor, U.S. Department of Labor, Washington, D.C.
For the Certifying Officer

Before: **Larry S. Merck**
Administrative Law Judge

ORDER GRANTING REQUEST FOR REMAND

This case, which arises under the temporary agricultural employment provisions of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(ii), and the implementing regulations set forth at 20 C.F.R. Part 655, Subpart A, has been assigned to the undersigned administrative law judge for appropriate proceedings. It involves a December 30, 2014, request for administrative review of the Certifying Officer's ("CO") denial of its H-2B application. 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.

Following the CO's denial of an application under 20 C.F.R. § 655.32¹, an employer may request review by the Board of Alien Labor Certification Appeals ("BALCA" or "the Board"), to

¹ All citations to 20 C.F.R. Part 655, Subpart A refer to the Final Rule published in the Federal Register on December 19, 2008 ("2008 Rule"), 73 Fed. Reg. 78020. The Department of Labor ("DOL") indefinitely delayed

be heard by a panel of the Board or an individual member. 20 C.F.R. § 655.33(a). Based upon a review of the Appeal File, the request for review, and any legal briefs submitted, the Board is required (within ten days of receipt of the appeal file and five days of receipt of the CO's brief) to either affirm the denial of temporary labor certification, direct the CO to grant the certification, or remand the case to the CO for further action. 20 C.F.R. § 655.33(a), (e). In H-2B cases, the BALCA member or panel assigned to conduct the review may only consider the Appeal File and any legal briefs submitted by the parties. 20 C.F.R. § 655.33(e).

By email, on January 8, 2015, Jeffrey S. Nesvet, Esq., Office of the Solicitor, advised that the CO and the Complainant had resolved the case. He further advised that the CO had agreed to grant the application and therefore requested a remand of this matter, and stated that Complainant had been contacted and expressed no objection to the remand.

Inasmuch as the parties agree that this matter should be remanded to the Certifying Officer for further processing, it will be remanded. Accordingly,

ORDER

IT IS HEREBY ORDERED that this matter is **REMANDED** to the Certifying Officer for further processing.

For the Board:

LARRY S. MERCK
Administrative Law Judge

implementation of the Final Rule published in the Federal Register 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 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 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).