

U.S. Department of Labor

Board of Alien Labor Certification Appeals
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Issue Date: 12 August 2015

Case No.: 2015-TLN-00054

ETA Case No.: H-400-15188-446388

In the Matter of

STAN SWEENEY, LLC
Employer

ORDER OF REMAND

This above-captioned matter involves the labor certification application by Stan Sweeney LLC (“Employer”) for temporary employment of nonimmigrant foreign workers (H-2B workers) under the Immigration and Nationality Act (“INA”), as amended, 8 USC § 1101, et seq., and its implementing regulations at 20 CFR § 655, Subpart A.

On August 7, 2015, the Board of Alien Labor Certification Appeals (“BALCA”) received a letter from the Employer requesting administrative review of the Certifying Officer’s Final Determination denying the Employer’s labor certification application as deficient.

By letter dated August 11, 2015, counsel for the Certifying Officer submitted a request that this matter be remanded to the Certifying Officer to issue a Notice of Acceptance for the Employer’s H-2B application.¹ In his August 11, 2015 letter, counsel for the Certifying Officer stated that the Employer’s representative has been notified of the request and “supports the fastest possible action to accomplish the issuance of a Notice of Acceptance.”

¹ Counsel for the Certifying Officer is reminded that Rules of Practice and Procedure for Administrative Hearings before the Office of Administrative Law Judges were revised effective June 18, 2015. *See* Final Rule, Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges, 80 Fed. Reg. 28,767 (May 19, 2015) (hereafter “New Rules”), as amended at 80 Fed. Reg. 37539 (July 1, 2015) [ministerial corrections]. The remand request submitted was not fashioned as a motion in accordance with the New Rules. *See* 29 C.F.R. § 18.33(b).

In view of the foregoing, **the above-referenced matter is REMANDED** to the Certifying Officer for additional processing in accordance with 20 CFR Part 655.²

For the Board:

LYSTRA A. HARRIS
Administrative Law Judge

² The proposed revisions to federal regulations related to the H-2B program, 20 CFR Part 655, Subpart A, published in Vol. 77 Fed. Reg., No. 34 at 10038-10109 and 10147-10169 (Feb. 21, 2012) were stayed on May 16, 2012 following a U.S. District Court decision, Vol. 77 Fed. Reg., No. 95 at 28764 (May 16, 2012). See also *Bayou Lawn & Landscape Services, et. Al. v. Sec. of Labor*, 713 F3d 1080 (11th Cir. 2013) affirming the U.S. District Court for Northern Florida. Accordingly, the regulations promulgated at Vol. 73 Fed. Reg., No.245 at 78020-78069 (Dec. 19, 2008) apply in this matter.