



Issue Date: 31 March 2016

BALCA Case No.: 2016-TLN-00030
ETA Case No.: H-400-16017-469348

In the Matter of:

Wright & Sudlow, Inc.,

Employer.

ORDER OF REMAND

This matter arises under the temporary non-agricultural employment provisions of the Immigration and Nationality Act (“INA,” or “the 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.¹ The H-2B program permits employers to hire foreign workers to perform temporary, non-agricultural work within the United States “if unemployed persons capable of performing such service or labor cannot be found in [the United States].” 8 U.S.C. § 1101(a)(15)(H)(ii)(b). Employers who seek to hire foreign workers through the H-2B program must apply for and receive a “labor certification” from the United States Department of Labor (“DOL” or the “Department”), Employment and Training Administration (“ETA”). 8 C.F.R. § 214.2(h)(6)(iii). Following the Certifying Officer’s (“CO”) denial of an application, an employer may request administrative review by the Board of Alien Labor Certification Appeals (“the Board” or “BALCA”). 20 C.F.R. § 655.61.

On January 17, 2016, Wright & Sudlow, Inc., (“Employer”) submitted an application for temporary labor certification to the Department’s ETA. AF 29-45.² On March 10, 2016, the CO sent a “Notice of Application Returned Without Review,” returning the application because it did not include a Prevailing Wage Determination (“PWD”) as required under §655.10. AF 24-25. On March 17, 2016 Employer filed a request for administrative review. AF 1-23.

On March 30, 2016, BALCA received notice that the Certifying Officer has agreed to remand the Employer’s application for further processing. The Certifying Officer indicated that the Employer’s representative has no objection to its request. In light of the foregoing, it is hereby **ORDERED** that this matter is **REMANDED**.

¹ On April 29, 2015, the Department of Labor (DOL) and the Department of Homeland Security (DHS) jointly published an Interim Final Rule to replace the regulations at 20 C.F.R. Part 655, Subpart A. See 80 Fed. Reg. 24042, 24109 (Apr. 29, 2015) (“2015 IFR”). The 2015 IFR applies if an employer filed its temporary labor certification application after April 29, 2015 and requested a start date after October 1, 2015. In the present case, Employer filed its temporary labor certification application after April 29, 2015, requesting a start date of need after October 1, 2015. Thus, the 2015 IFR applies.

² Citations to the Administrative File will be abbreviated “AF” followed by the page number.

SO ORDERED.

SCOTT R. MORRIS
Administrative Law Judge

Cherry Hill, New Jersey