U.S. Department of Labor

Board of Alien Labor Certification Appeals
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Issue Date: 20 February 2018

BALCA Case No.: 2018-TLN-00058
ETA Case No.: H-400-17293-308228

In the Matter of:

ATCHESON LAWN AND LANDSCAPING,
Employer.

Appearance: Robin McCormick
Atcheson Lawn and Landscape, Inc.
3170 NE Carnegie Drive
Suite 400
Lee's Summit, MO 64064
For the Employer

Nora Carroll, Esquire
Office of the Solicitor
U.S. Department of Labor
Washington, D.C.
For the Certifying Officer

Before: Daniel Solomon
Administrative Law Judge

DECISION AND ORDER

ORDER OF DISMISSAL

On January 18, 2018, the Board of Alien Labor Certification Appeals ("BALCA") received a letter from Acheson (the "Employer") requesting administrative review of the Certifying Officer's Notice of Decision in the above-captioned H-2B temporary labor certification matter. On February 5, 2018, I entered an order granting the parties to February 12, 2018, to file briefs.

On February 8, 2018, after an exchange of emails, the Department of Labor filed a motion to dismiss, advising me:

On October 31, 2017, Atcheson applied for temporary labor certification, seeking approval to hire fifteen foreign workers as Landscaping and Groundskeeping Workers for the period January 25, 2018 to November 16, 2018. AF1 75. On November 9, 2017, the CO issued a Notice of

Deficiency identifying a number of deficiencies that the employer later corrected. AF 54-74. On December 14, 2017, the CO issued a Notice of Acceptance. AF 54-60. On January 9, 2018, the employer's application was partially certified for ten workers. AF 41-44. On January 10, 2018, the employer's representative contacted the CNPC, explaining that while preparing the I-129 to file with USCIS, she discovered that the semi-annual H-2B visa cap had been reached, and asking if the employer could appeal the certification in order to change its start date of need to April 1, 2018. AF 40. In response, the CNPC explained that since a final determination had been issued, the employer could not make amendments to its application. AF 38. The employer followed with an appeal on January 17, 2018.

Amendments after certification are not permitted. 20 CFR § 655.35(d); see also 20 CFR § 655.16(e) ("The employer may amend the job order at any time before the CO makes a final determination."); 80 FR 24108, 24075 ("[A]n employer [may] seek such amendments only before certification, not after certification."). The Department of Labor argues that Atcheson's request to modify its start date of need from January 25, 2018 to April 1, 2018 is greater than fourteen days and was made after the CO's final determination partially certifying the application. See AF 40. The regulations prohibit such modifications. See 20 CFR § 655.33.

The Respondent has not responded to the Motion to Dismiss.

Accordingly, after having been fully advised in this matter,

This claim is **DISMISSED**.

SO ORDERED.

For the Board:

DANIEL F. SOLOMON
ADMINISTRATIVE LAW JUDGE