



**Issue Date: 30 March 2018**

**BALCA Case No.:** 2018-TLN-00045  
**ETA Case No.:** H-400-17308-957755

*In the Matter of:*

**TITUS WORKS, LLC,**  
*Employer.*

**ORDER DENYING EMPLOYER'S  
PETITION FOR EN BANC REVIEW**

*Procedural History*

This matter arises under the temporary non-agricultural labor or services provision of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(ii)(b), and its implementing regulations at 20 C.F.R. Part 655, Subpart A. The Employer filed an *Application for Temporary Employment Certification* on November 4, 2017. (AF 139-227).<sup>1</sup> The Certifying Officer (“CO”) issued a *Notice of Deficiency* on November 14, 2017. (AF 134-138). The Employer responded on November 28, 2017 and the CO issued a *Final Determination* denying certification on December 25, 2017. (AF 21-133). The Employer thereafter sought administrative review with the Board of Alien Labor Certification Appeals (“BALCA” or the “Board”). (AF 1-20).

This matter was assigned to Administrative Law Judge (“ALJ”) Richard Clark, who affirmed the CO’s determination on January 30, 2018. On the same day the decision was issued, the Employer filed a *Follow-Up to Pending Appeal Brief*. In the interest of fairness, ALJ Clark treated the brief as a motion for reconsideration. On February 2, 2018, ALJ Clark affirmed his earlier decision in an *Order Denying Reconsideration*. On March 1, 2018, the Employer filed *Employer’s Motion for Reconsideration*. ALJ Clark issued a *Second Order Denying Motion for Reconsideration* on March 6, 2018, in which he determined that the Employer’s motion was not timely filed.

On March 9, 2018, the Employer filed *Employer’s Petition for En Banc Review & in the Alternative Motion for Reconsideration*. ALJ Clark issued an *Order Denying Employer’s Motion for Reconsideration* on March 21, 2018 and transferred the case to the undersigned for adjudication of the Employer’s request for en banc review.

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<sup>1</sup> References to the appeal file will be abbreviated with an “AF” followed by the page number.

*Discussion*

BALCA has traditionally provided an en banc procedure for review of three-member panel decisions in permanent alien labor certification appeals. Unlike “PERM” appeals, however, the H-2B regulations provide for expedited BALCA review. 20 C.F.R. § 655.61(f). In response to a 2015 petition for en banc review by the Certifying Officer in *Cumar, Inc.*, 2015-TLN-00001, I explained that “the Board has determined that it would be inconsistent with the expedited regulatory scheme in H-2B cases to extend an en banc rehearing procedure for review of decisions issued” under the H-2B regulations. *See* Letter from Acting Chief Administrative Law Judge Henley to Jeffrey L. Nesvet et al. (Jan. 15, 2015) (attached).

While the H-2B program now operates under the 2015 Interim Final Rule, the new regulations maintained expedited BALCA review. *See* 80 Fed. Reg. 24042, 24081 (Apr. 29, 2015) (“The substance of [the administrative review] provision is the same as that in the 2008 rule” except that “this provision increases from 5 business days to 7 business days: the time in which the CO will assemble and submit the appeal file . . . ; the time in which the CO may file a brief . . . ; and the time BALCA should provide a decision upon the submission of the CO’s brief . . .). Accordingly, BALCA’s en banc review policy remains unchanged.<sup>2</sup>

Because the Board declines to offer en banc review of a single member or three-member decision under the H-2B regulations, the Employer’s request for en banc review is **DENIED**.

**SO ORDERED.**

For the Board:

Stephen R. Henley  
Chief Administrative Law Judge  
and  
Chair of the Board of Alien Labor  
Certification Appeals

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<sup>2</sup> *See* Letter from Chief Administrative Law Judge Henley to Jeffrey L. Nesvet et al. (Mar. 9, 2018) (attached).