

**U.S. Department of Labor**

Board of Alien Labor Certification Appeals  
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**Issue Date: 30 November 2017**

**BALCA Case No.: 2018-TLN-00011**  
**ETA Case No.: H-400-17235-683092**

*In the Matter of:*

**KOE Equine,**  
*Employer.*

Appearances: Craig D. McDougal, Esq.  
William Velie, Attorneys at Law PLLC  
Norman, OK  
*For the Employer*

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Office of the Solicitor  
U.S. Department of Labor  
Washington, DC  
*For the Certifying Officer*

Before: **JERRY R. DeMAIO**  
Administrative Law Judge

**DECISION AND ORDER**  
**AFFIRMING DENIAL OF CERTIFICATION**

This case arises from the Employer's request for review before the Board of Alien Labor Certification Appeals ("BALCA") of the denial by a Certifying Officer ("CO") for the Employment and Training Administration ("ETA") of its application for an H-2B temporary labor certification. 8 U.S.C. §§ 1101(a)(15)(H)(ii)(b), 1103(a), 1184(a)(c); 8 C.F.R. § 214.2(h); 20 C.F.R. Part 655, Subpart A.<sup>1</sup> For the reasons set forth below, the CO's denial of temporary labor certification in this matter is affirmed.

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<sup>1</sup> On April 29, 2015, the Department of Labor ("DOL") and the Department of Homeland Security jointly published an Interim Final Rule ("2015 IFR") amending the standards and procedures for the H-2B temporary labor certification program. 80 Fed. Reg. 24042 (Apr. 29, 2015). This case will be heard under the procedures outlined in the 2015 IFR, and all citations to 20 C.F.R. Part 655, Subpart A refer to the regulations as amended in the 2015 IFR.

## **STATEMENT OF THE CASE**

On June 14, 2017, KOE Equine (“Employer”) filed an application for H-2B temporary labor certification with the ETA. The application sought to certify the employment of 60 thoroughbred horse groomers for employment from November 15, 2017 through April 30, 2018. (AF 30-67).<sup>2</sup> The application identified the Employer’s address in subsection C of the Form ETA-9142B as “KOE Equine, P.O. Box 200397, Arlington, Texas” (AF 31); and the Place of Employment address in subsection F.c. of the form as “Fair Grounds Race Course & Slots, 171 Gentilly Blvd, New Orleans LA”. (AF 33).

On September 8, 2017, the CO issued a Notice of Deficiency (“NOD”) under 20 C.F.R. § 655.31, notifying the Employer that its application had failed to meet the criteria for certification (AF 26-29). In the NOD, the CO asked for additional information to verify the existence of the Employer:

The employer must submit evidence that it satisfied the regulatory definition of H-2B employers. The employer’s response must include evidence which shows the employer’s business name and that the address provided on ETA Form 9142 is associated with KOE Equine. Examples of evidence may include articles of incorporation, a business license, other documentation issued by the State of Louisiana which indicates the business name and address, documentation issued by the IRS which indicates the business name and address, bank account statements that list the requested information or other official documentation which satisfies the requirement. (AF 29).

On September 15, 2017, the Employer responded to the CO’s NOD by submitting a copy of a hand-written federal tax return for KOE Equine, bearing the address “P.O. Box 200397, Arlington TX, 76006”. (AF 21-25).

On October 30, 2017, the CO denied the temporary labor certification application. As grounds for denial, the CO noted that:

In response to the NOD, the employer provided a copy of a 2017 Form 941, Employer’s Quarterly Federal Tax Return. This form was completed (handwritten) by the employer and was not an issued document by the State of Louisiana or the IRS. Furthermore, the form does not show the address provided on the employer’s ETA Form 9142, 171 Gentilly Blvd in New Orleans, LA. The Chicago National Processing Center is unable to verify the existence of KOE Equine through the documentation submitted by the employer. Therefore, the employer did not overcome the deficiency.

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<sup>2</sup> Citations to the appeal file are abbreviated “AF” followed by the page number.

On November 6, 2017, the Employer requested administrative review of the denial before BALCA, and included a brief in support of its appeal. (AF 1-5). On November 16, 2017, a Notice of Docketing was issued allowing the parties to file briefs within 7 business days. On November 28, 2017, the CO filed a brief in support of the denial of the application. The case is now set for review, and the CO's denial of certification will be affirmed.

## **DISCUSSION**

The question before the Board is whether the Employer's hand-written tax return, with a post office box address, satisfies the requirement for evidence of the Employer's name and business address and, in turn, the existence of the Employer.

The Employer's primary argument seems to be that the CO somehow mixed up the worksite and business addresses. The Employer's argument (in its near-entirety) is:

There seems to be confusion between the worksite address and the business address. We originally submitted Form 941s with the business address submitted on the forms. Due to the fact that they were hand written and the worksite address was not on the form, but the business address was, Department of Labor denied the petition.

. . . .

The worksite address on Gentilly is a racetrack. It is not KOE Equine's business address because KOE Equine travels to different tracks as the worksite address. Therefore, they do not own the racetrack and would not have IRS documents with that address on it. (AF 1, emphasis in original).

The CO correctly points out that, to qualify as an Employer under the definition in 20 C.F.R. § 655.5, a person or other organization must have "a place of business (physical location) in the U.S." Here, regardless of whether they got mixed up or not, the Employer provided the CO with two potential addresses: the first on Gentilly Avenue in New Orleans, Louisiana, and the second, a post office box in Arlington, Texas. The Gentilly Avenue address is, by the Employer's admission, not the address for KOE Equine, but rather for the racetrack. Conversely, the post office box address is not a "physical location." Therefore, neither of the addresses provided meets the requirement of a physical address and does not provide confirmation of the existence of the Employer.

Even if the post office box address were, furthermore, acceptable as a physical address, the hand-written tax return did not satisfy the CO's request for proof of the Employer's place of business. In the NOD, the CO asked for "articles of incorporation, a business license, other

documentation issued by the State of Louisiana which indicates the business name and address, documentation issued by the IRS which indicates the business name and address, bank account statements that list the requested information or other official documentation.” (AF 29). In short, the CO required some official or government document confirming the existence and physical address of KOE Equine. A handwritten document prepared by the Employer itself does not fall within these criteria and does not, standing alone, suffice to confirm the Employer’s physical address. The CO, therefore, properly found the response to the NOD unacceptable under 20 C.F.R. § 655.32(c), and correctly denied the certification for that reason as well.

Based on these reasons, the Employer has not met its burden of proof to show that it falls within the definition of an employer as required under 20 C.F.R. § 655.15(a), and the CO correctly denied the application. The CO’s denial is affirmed.

### **ORDER**

**IT IS ORDERED** that the denial of labor certification in this matter is hereby **AFFIRMED**.

For the Board:

**JERRY R. DeMAIO**  
Administrative Law Judge