



Issue Date: 01 April 2019

BALCA CASE NO.: 2019-TLN-00064

ETA CASE NO.: H-400-18331-159922

In the Matter of:

RBD CONSTRUCTION INC.,
Employer.

ORDER DISMISSING APPEAL

This matter arises under the labor certification process for temporary non-agricultural employment in the U.S. under the Immigration and Nationality Act, 8 U.S.C. § 1101 *et seq.*, and the associated regulations promulgated by the Department of Labor at 20 C.F.R. Part 655, Subpart A.¹

On February 19, 2019, the Certifying Officer (“CO”) for the Office of Foreign Labor Certification denied the H-2B Application for Temporary Employment Certification of RBD Construction Inc. (“Employer”) because it failed to establish the job opportunity as temporary in nature. On February 26, 2019, Employer timely requested administrative review before the Board of Alien Labor Certification Appeals (“BALCA”). On March 19, 2019, I issued a Notice of Receipt of Appeal File and Expedited Briefing Schedule, allowing the CO and Employer to file briefs in support of their positions no later than March 28, 2019, by 4:30 p.m. Pacific Time. Neither party submitted a brief.

In the March 19, 2019 Order, I noted that that regulations provide that an employer’s request for review must: (1) clearly identify the particular determination for which review is sought; (2) set forth the particular grounds for the request; (3) include a copy of the CO’s determination; and (4) only contain legal argument and such evidence as was actually submitted to the CO before the date the CO’s determination was issued.² 20 C.F.R. § 655.61(a). Employer’s request for review included a copy of the CO’s determination, referenced “Administrative Review of Denial,” and merely stated, “I write to request Administrative Review of the above referenced case. A copy of the denial is attached.” Appeal File at 1-10. As Employer did not “set forth the particular grounds

¹ On April 29, 2015, the Department of Labor (“DOL”) and the Department of Homeland Security (“DHS”) jointly published an Interim Final Rule (“IFR”) amending the regulations at 20 C.F.R. Part 655, Subpart A. *See Temporary Non-Agricultural Employment of H-2B Aliens in the United States; Interim Final Rule*, 80 Fed. Reg. 24042, 24109 (Apr. 29, 2015). The H-2B program currently operates under the 2015 IFR.

² The CO’s Final Determination letter also informed Employer of the regulatory requirements for the request for review. Appeal File at 12-13.

for the request,” in its request for review, I provided notice that Employer’s failure to set forth the grounds for its request in a brief may result in the dismissal of this matter.³

If an employer does not request administrative review of a denial of certification in accordance with [Section 655.61](#), the denial is final and the Department of Labor will not accept any appeal on that Application for Temporary Employment Certification. 20 C.F.R. § 655.53(c). Section 655.61 states that an employer’s request for review *must* set forth the particular grounds for the request. 20 C.F.R. § 655.61(a)(3). Because Employer failed to do so either in its request for review or through a later-filed brief, the appeal is dismissed. Therefore, the CO’s February 19, 2019, determination is the final agency decision.

SO ORDERED.

For the Board of Alien Labor Certification Appeals:

RICHARD M. CLARK
Administrative Law Judge

³ In cases arising under the permanent labor certification regulations, BALCA has held that where the request for review does not set forth specific grounds for review and no brief is filed, the request for review will be dismissed. *North American Printing Ink Co.*, 88-INA-41 (Mar. 31, 1988) (en banc); *Malone & Assocs.*, 90-INA-360, slip op. at 2 (July 16, 1991) (en banc) (timely filing of a brief cures any error arising from the failure to state grounds for the appeal in the request for review). The permanent labor certification regulations contain nearly identical requirements for a request for review as those under the H-2B regulations. *Compare* 20 C.F.R. § 656.26(a) *with* 20 C.F.R. § 655.61(a).