

**U.S. Department of Labor**

Board of Alien Labor Certification Appeals  
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**Issue Date: 19 March 2019**

**BALCA Case No.:** 2019-TLN-00051  
**ETA Case No.:** H-400-18347-529630

*In the Matter of:*

MCCLENDON CONSTRUCTION CO., INC.,  
*Employer.*

Appearance: Susan R. Littleton, Esquire  
The Fowler Law Firm, PC  
Austin, Texas  
*For the Employer*

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

Before: Sean M. Ramaley  
Administrative Law Judge

**DECISION AND ORDER REVERSING CERTIFYING OFFICER IN PART  
AND REMANDING FOR FURTHER PROCESSING**

This case arises from McClendon Construction Company, Inc.’s (“Employer”) request for review of the Certifying Officer’s (“CO”) decision to deny an application for temporary alien labor certification under the H-2B non-immigrant program. The H-2B program permits employers to hire foreign workers to perform temporary nonagricultural work within the United States on a one-time occurrence, seasonal, peakload, or intermittent basis, as defined by the United States Department of Homeland Security (“DHS”). *See* 8 U.S.C. § 1101(a)(15)(H)(ii)(b); 8 C.F.R. § 214.2(h)(6);<sup>1</sup> 20 C.F.R. § 655.6(b).<sup>2</sup> Employers who seek to hire foreign workers under this program must apply for and receive labor certification from the United States Department of Labor using a Form ETA-9142B, *Application for Temporary Employment*

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<sup>1</sup> The definition of temporary need is governed by 8 C.F.R. § 214.2(h)(6)(ii)(B). Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019 and Continuing Appropriations Act, 2019, Pub. L. No. 115-245, Division B, Title I, § 112 (2018).

<sup>2</sup> On April 29, 2015, the Department of Labor (“DOL”) and the Department of Homeland Security jointly published an Interim Final Rule (“IFR”) amending the standards and procedures that govern the H-2B temporary labor certification program. *See Temporary Non-Agricultural Employment of H-2B Aliens in the United States; Interim Final Rule*, 80 Fed. Reg. 24,042 *et seq.* (Apr. 29, 2015). The rules provided in the IFR apply to applications “submitted on or after April 29, 2015, and that ha[ve] a start date of need after October 1, 2015.” IFR, 20 C.F.R. § 655.4(e). All citations to 20 C.F.R. Part 655 in this opinion and order are to the IFR.

*Certification* (“Form 9142”). A CO in the Office of Foreign Labor Certification (“OFLC”) of the Employment and Training Administration reviews applications for temporary labor certification. Following the CO’s denial of an application under 20 C.F.R. § 655.53, an employer may request review by the Board of Alien Labor Certification Appeals (“BALCA” or “the Board”). 20 C.F.R. § 655.61(a).

## **BACKGROUND**

On January 7, 2019, the Department of Labor’s Employment and Training Administration (“ETA”) received an application for temporary labor certification from Employer for eight construction laborers for the period of April 1, 2019, to December 31, 2019. (AF 102-133).<sup>3</sup> Employer indicated that the nature of its temporary need was “peakload.” On Employer’s application (Form 9142), in response to its statement of temporary need, Employer stated:

Our road and street construction company has a peakload need of April 1 - December 31, 2019 in which we need to supplement our permanent construction laborers with temporary workers due to the peakload demand from our clients. We have contracts for multiple large projects for the 2019 season. We perform large road and street construction projects in phases for municipalities and counties. We have multiple large projects beginning April 1, 2019 and ending December 31, 2019. They include the following: 1) Second phase of Trail Drive Extension for the City of Ft. Worth, Texas, 2) Second phase of The Residential Street Rebuilds in Arlington, Texas, and 3) Blue Mound Road and Willow Springs Projects, Fort Worth, Texas. We do not need the temporary laborers during the January—March time period as that is wintertime in North Texas and our non-peakload season when our company handles smaller road and street repair projects that consist of residential street reconstruction and repair.

(AF 102).

In an attachment to its application, Employer further stated that April 1, 2019, through December 31, 2019, was anticipated to be similar to its previous peakload seasons and represented the bulk of its gross income for the year. Employer explained that its projects from January to March are smaller and consist of road and street patching and repairs. Employer then asserted that it has attempted to recruit U.S. workers to fill these construction laborer positions, but has been unable to hire an adequate number of U.S. workers. (AF 117-19). In support of its application, and in particular of its peakload need, Employer attached its 2018 payroll records. (AF 120).

The CO issued a *Notice of Deficiency* (“NOD”) on January 23, 2019, listing three deficiencies in Employer’s application. (AF 93-101). For the purposes of this appeal, only the first two deficiencies will be addressed.<sup>4</sup> First, the CO found that Employer failed to “establish

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<sup>3</sup> References to the appeal file will be abbreviated with an “AF” followed by the page number.

<sup>4</sup> The additional deficiency pertained to Employer’s job order and Section F.a.Item3 of its application. The application indicated that the hourly work schedule was 7:30 A.M. to 5:30 P.M., while the job order indicated that

the job opportunity as temporary in nature.” 20 C.F.R. §§ 656.6(a) and (b). The CO explained that “an employer must establish that its need for non-agricultural services or labor is temporary, regardless of whether the underlying job is permanent or temporary.” (AF 98). The CO noted that an employer’s need is considered temporary if it is justified to the CO as one of the following: (1) a one-time occurrence; (2) a seasonal need; (3) a peak load need; or (4) an intermittent need as defined by DHS regulations. The CO determined that Employer failed to submit sufficient information to establish its requested standard of need or period of intended employment. *Id.* The CO stated that Employer’s 2018 payroll report does not support a peakload need from April through December, noting that the hours worked in May were lower than the hours worked in the non-peak month of February. The CO further stated that Employer did not submit additional documentation to support its statement that its large construction project season begins and ends during the requested dates. The CO determined that it was “unclear how the employer experiences a temporary need for workers from April 1, 2019, to December 31, 2019.” *Id.*

The CO concluded that further explanation and documentation was necessary. Specifically, the CO’s documentation request included the following:

- 1) An explanation and supporting documents that substantiate the employer’s statements that in North Texas large road and street projects start in April. This documentation can include supportive letters from building trade organizations in the employer’s area of intended employment;
- 2) Contracts that illustrate that the employer has been contracted for large road and street construction projects. The contracts must also include a description of the work to be performed, scheduled timeframe for work’s completion, and include signatures of all appropriate parties;
- 3) A summary listing of all projects in the area of intended employment for the previous two calendar years. The list should include start and end dates of each project and worksite addresses;
- 4) Summarized monthly payroll reports for the 2016 and 2017 calendar years that identify, for each month and separately for full-time permanent and temporary employment in the requested occupation Construction Laborer at the requested area of intended employment of Burleson, Texas, the total number of workers or staff employed, total hours worked, and total earnings received. Such documentation must be signed by the employer attesting that the information being presented was compiled from the employer’s actual accounting records or system; and
- 5) Other evidence and documentation that similarly serves to justify the dates of need being requested for certification. In the event that the employer is a new business, without an established business history and activities, or otherwise does not have the specific information and documents itemized above, the employer is not exempt from providing evidence in response to this NOD. In lieu of the documents requested, the employer must submit any other evidence and documentation relating to the employer’s current business activities and

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the hourly work schedule was 8:00 A.M. to 5:00 P.M. (AF 101). The CO requested that Employer modify the job order, which Employer did. As Employer cured this deficiency, it is not relevant for purposes of this appeal.

the trade industry that similarly serves to justify the dates of need being requested for certification.

(AF 99).

Secondly, the CO found that Employer failed to establish a temporary need for the number of workers requested. 20 C.F.R. §§ 656.11(e)(3) and (4). The CO stated that Employer did not indicate how it determined that it needed eight construction laborers during the requested period of need, stating that additional explanation and documentation were required. Specific documentation requested included the following:

- 1) An explanation with supporting documentation of why the employer is requesting eight Construction Laborers for Burleson, Texas, and the secondary worksites during the dates of need requested;
- 2) If applicable, documentation supporting the employer's need for eight Construction Laborers such as contracts, letters of intent, etc. that specify the number of workers and dates of need;
- 3) Summarized monthly payroll reports for the 2016 and 2017 calendar years that identify, for each month and separately for full-time permanent and temporary employment in the requested occupation Construction Laborer at the requested area of intended employment of Burleson, Texas, the total number of workers or staff employed, total hours worked, and total earnings received. Such documentation must be signed by the employer attesting that the information being presented was compiled from the employer's actual accounting records or system; and
- 4) Other evidence and documentation that similarly serves to justify the number of workers requested, if any.

(AF 100).

On February 1, 2019, Employer filed a response to the NOD and provided additional information and further explanation of the submitted documents, which it asserted supported its temporary need for eight construction laborers. (AF 58-92).

Employer attested that it experiences a peakload need from April to December due to the effects of colder weather on construction, and submitted weather data and documents pertaining to concrete and weather. (AF 58-92). Employer stated that the weather data shows the average low temperature is 34.0°F in January, 38.7°F in February, and 46.4°F in March, and that there is not an average low temperature above 50°F until April, which experiences an average low temperature of 54.0°F. Employer contended that the temperatures from January to March are too cold to pour concrete and asphalt and submitted articles on paving, which state that “[c]oncrete can freeze before it gains strength which breaks up the matrix” and that “[c]oncrete sets more slowly when it is cold—very slow below 50°F; below 40°F the hydration reaction basically stops and the concrete doesn't gain strength.” (AF 61). Employer also submitted a technical advisory guidance from the Texas Department of Transportation, which states that hot mix asphalt should

be placed “when the roadway surface temperature is 60°F or higher unless otherwise approved.” (AF 62). This guidance further states:

There are numerous accounts of premature pavement failures due to debonding, raveling, pot holes, etc., that can be traced to cold weather paving. There is also documented research that shows that a high percentage of premature hot mix failures are related to cold temperature paving.

(AF 62). Additional documentation asserts that ambient temperatures, base temperatures, and hot mixed asphalt temperatures are “critical to obtaining compaction and longevity of the newly paved surfaces and patches” and that the “normal requirement is that the ambient temperature should be 50°F and rising on a paving or patching project.” (AF 63-64). Further, the documentation states that “precipitation can reduce the temperature of the hot mix asphalt, which will hamper the efforts to achieve the required compaction.” *Id.*

Next, Employer explained its need for eight construction laborers. To support its statement, Employer included monthly payroll data from 2016-2018; construction notices for the Trail Drive extension, Blue Mound Road reconstruction, and Arlington Residential Rebuild program; and a copy of its 2018 Labor Certification, which certified eight temporary construction laborers from April 4, 2018, through December 31, 2018. Employer explained that it employs approximately thirty permanent construction workers and needs eight additional temporary workers during their peakload season to work alongside the permanent workers on three road construction projects: Trail Drive Extension, the Blue Mound Road and Willow Springs Project, and the Residential Street Rebuild. (AF 66-71).

On February 7, 2019, the CO issued a Final Determination, finding that Employer failed to establish (1) the job opportunity as temporary in nature and (2) a temporary need for the number of workers requested. (AF 46-57). The CO determined that the information Employer submitted did not overcome the deficiencies regarding its failure to establish its temporary need and a *bona fide* need for the number of workers requested.

The CO noted that Employer submitted additional documentation. However, the CO stated that Employer did not submit contracts for its large road and street construction projects or a summary listing of all projects in the area of intended employment for the previous two calendar years. Further, the CO found that Employer’s explanation that the increased rainfall during the month of May resulted in worker construction hours being scaled back in 2016, 2017, and 2018 conflicts with Employer’s statement that it experiences a peakload need from April through December. The CO then noted that Employer’s 2017 payroll records show more hours were worked in February than in the purported months of need of May, August, and November. Employer additionally noted that in 2017, the average hours worked per week during Employer’s claimed non-peak season was 1,017 hours per week, while Employer’s claimed peak-season average was approximately 1,164 hours worked per week. Similarly, the CO noted that the 2016 payroll records show more hours reported in January than May, June, August, September, November, and December. (AF 52-53). Regarding Employer’s 2018 certification, the CO stated that “past certification does not justify a temporary need for workers.” (AF 54).

The CO further determined that Employer did not establish a temporary need for the number of workers requested, stating that Employer did not submit sufficient documentation to support the specified number of workers and the dates of need. The CO noted that Employer submitted a list of projects the temporary construction laborers would work on, but stated that this did not explain how Employer determined it needs eight temporary workers specifically. Further, the CO stated that Employer's payroll records also do not support a need for eight workers, noting that the records for 2016 and 2017 showed that Employer did not have any temporary workers and that in 2018 Employer only had four temporary workers from August to December. (AF 56).

By letter dated February 20, 2019, which was received on February 21, 2019, Employer submitted a request for administrative review to the Chief Administrative Law Judge regarding the CO's February 7, 2019 denial. (AF 1-45). In addition to resubmitting the documentation previously submitted in its response to the CO, Employer also submitted a 2019 project schedule that includes start and finish dates as well as notations that it is triple booked from April 2019, to December 2019, but that it only has two crews available at this time to complete the work.

Employer reiterated its argument that a peakload need is created due to the average temperatures below 50°F during the months of January, February, and March which restricts the amount of pouring and paving that can be done because concrete and asphalt can "freeze and fail to gain strength" in cold weather. (AF 2). As a result, Employer asserted that the months of April through December are a higher period of need. Employer further asserted that there were fewer hours worked in May in 2016, 2017, and 2018 due to it being the month with the highest average precipitation, which results in Employer having to scale back on construction hours. (AF 2-3).

Regarding its need for eight temporary workers, Employer referenced three road construction projects that requires temporary workers to supplement the permanent construction laborers. Employer stated that it is seeking the very same peak season and number of workers in 2019 that it requested and had certified in 2018. Employer further stated that, "[d]ue to the cap being reached in 2018, [Employer] was only able to bring in four (4) of its eight (8) temporary workers, and not until August. Thus, the 2018 payroll report only depicts temporary workers for five (5) months from August through December." (AF 4).

By Order dated March 6, 2019, the CO and the Employer were given the opportunity to file briefs in support of their positions on or before March 14, 2019. Employer submitted a brief on March 11, 2019, and restated the arguments enumerated in its request for administrative review.

### **SCOPE OF REVIEW**

BALCA has a limited scope of review in H-2B cases. Specifically, BALCA may only consider the appeal file prepared by the CO, the legal briefs submitted by the parties, and the employer's request for review, which may contain only legal argument and such evidence as was actually submitted to the CO before the date the CO's determination was issued. 20 C.F.R. § 655.61(a). After considering this evidence, BALCA must take one of the following actions in

deciding the case: (1) affirm the CO's determination; or (2) reverse or modify the CO's determination; or (3) remand to the CO for further action. (20 C.F.R. § 655.61(e)).

### **ISSUES**

The two issues on appeal from the CO are whether the Certifying Officer properly denied Employer's H-2B application due to:

- 1) Employer's failure to establish that its request for eight construction laborers for the period of April 1, 2019, to December 31, 2019, was based on a "temporary" employment need according to Employer's stated standard of "peakload" need; and
- 2) Employer's failure to establish a *bona fide* need for the number of workers requested.

### **DISCUSSION**

In order to obtain temporary labor certification for foreign workers under the H-2B program, Employer is required to establish that its need for the requested workers is "temporary." DHS regulations define temporary need as "any job in which the petitioner's need for the duties to be performed by the employee(s) is temporary, whether or not the underlying job can be described as permanent or temporary." 8 C.F.R. §214.2(h)(6)(ii)(A). Per the DHS regulations, employment is "of a temporary nature" when:

[T]he employer needs a worker for a limited period of time. The employer must establish that the need for the employee will end in the near, definable future. Generally, that period of time will be limited to one year or less, but in the case of a one-time event could last up to 3 years. The petitioner's need for the services or labor shall be a one-time occurrence, a seasonal need, a peak load need, or an intermittent need.

8 C.F.R. § 214.2(h)(6)(ii)(B).

Similarly, the DOL regulation addressing temporary need in H2-B cases also states that "the employer's need is considered temporary if justified to the CO as one of the following: A one-time occurrence; a seasonal need; a peakload need; or an intermittent need, as defined by DHS regulations." 20 C.F.R. §655.6.

In the current case, Employer applied for eight construction laborers for the period of April 1, 2019, to December 31, 2019, on the basis of a "peakload" need. (AF 102). In regard to peakload need the DHS regulation states:

The petitioner must establish that it regularly employs permanent workers to perform the services or labor at the place of employment and that it needs to supplement its permanent staff at the place of employment on a temporary basis due to a seasonal or short-term demand and that the temporary additions to staff will not become a part of the petitioner's regular operation.

8 C.F.R. §214.2(h)(6)(ii)(B)(3).

The Employer bears the burden of establishing why the job opportunity and number of workers being requested reflect a temporary need within the meaning of the H-2B program. 20 C.F.R. § 655.6(a) and (b). *See, e.g., Alter and Son General Engineering*, 2013-TLN-3 (ALJ Nov. 9, 2012) (affirming denial where the Employer did not provide an explanation regarding how its request fit within one of the regulatory standards of temporary need).

An Employer must also demonstrate a *bona fide* need for the number of workers and period of need requested. 20 C.F.R. § 655.11(e)(3) and (4). *See Roadrunner Drywall*, 2017-TLN-00035, slip op. at 9-10 (May 4, 2017) (affirming denial where the employer's temporary and permanent employee payroll data did not support its claimed number of workers or period of need); *see also Sur-Loc Flooring Systems, LLC*, 2013-TLN-00046 (Apr. 23, 2013) (reversing denial where the employer sufficiently justified the number of workers requested in its application and made good faith effort to provide alternative supporting documentation to the requested payroll records).

In this case, Employer submitted 2019 project plans; payroll records from 2016, 2017, and 2018; a copy of its 2018 certification for eight construction laborers; weather data relevant to its geographical area of intended employment in the state of Texas; and articles on asphalt and paving as it relates to weather. Employer stated that the months of April to December create a peakload need due to the restrictive effect of cold temperatures from January to March because concrete and asphalt poured below 50°F can “freeze and fail to gain strength.” (AF 2). Employer also asserted that fewer hours were worked in May 2016, 2017, and 2018 due to May experiencing the highest precipitation average, which results in Employer having to scale back on construction hours. (AF 2-3). Employer further asserted that it had eight construction workers certified for 2018, but was only able to employ four workers from August to December due to the 2018 cap being reached, and that it anticipates 2019 having the same peak season. (AF 4).

In the final denial, the CO determined the documents Employer provided did not demonstrate a need for eight construction laborers from April 1, 2019, to December 31, 2019, and specifically noted that Employer did not submit contracts or a summary listing of all projects in the area of intended employment for the previous two years. The CO also acknowledged that Employer was certified for eight workers in 2018, but stated that a “past certification does not justify a temporary need for workers.” (AF 54).

The CO is correct; the fact that the CO may have approved similar applications in the past is not ground to reverse the denial. *Rollings Sprinkler & Landscape*, 2017-TLN-00020 (Feb. 23, 2017). However, Employer's payroll records for 2018 indicate that to the extent it was able to employ four temporary construction laborers from August to December, it demonstrated its need for four temporary construction laborers during these months in 2018. (AF 19). Further, the CO appears to have acknowledged a peakload need from August to December by finding that the “payroll report for 2018 shows that the employer hired temporary workers from August through December, the total monthly hours worked for temporary workers indicate that the

employer only needed five workers.”<sup>5</sup> This statement demonstrates that the CO’s conclusion that Employer failed to establish a temporary need is not supported by the record with respect to the August 1, 2019, through December 31, 2019 portion of the Employer’s requested period of need.

Further, Employer submitted climate data and articles that pertain to concrete and asphalt in relation to temperature. This data indicates that concrete and asphalt cannot be poured when the temperature falls below 50°F, or else it can freeze and fail to gain strength. The weather data Employer submitted shows an average low temperature of 34.0°F in January, 38.7°F in February, and 46.4°F in March, and that there is not an average low temperature above 50°F until April. This data supports Employer’s assertion that it cannot perform this labor during the months of January, February, and March, and thus, experiences a peakload need during the warmer months.

After considering all of the information, I find that Employer established a peakload need from August 1, 2019, to December 31, 2019, on the basis of its 2018 payroll records for four temporary construction laborers. Although Employer contends that it needs eight temporary workers and that it was only able to employ four temporary workers in 2018 due to the established cap, Employer has not established a basis for eight temporary construction laborers. As it is Employer’s burden to establish how many workers it needs, I therefore, find that Employer has established a need for at least four temporary construction laborers based on its 2018 payroll records.

However, based on the information provided in the application and in Employer’s response to the NOD, the CO was correct in determining that Employer did not establish a temporary need for laborers from April 1, 2019, through July 31, 2019. Although the 2019 project schedule states that Employer is triple booked from April to December, and provides start and end dates for projects, the 2019 schedule was not included in Employer’s response to the NOD. (AF 58-92). Further, the 2019 schedule was not addressed in the CO’s summary of new evidence in its final determination. (AF 46-57). Rather, it appears the 2019 schedule was not submitted until Employer’s request for administrative review. (AF 1-45). Employer’s request for review “may only contain legal argument and such evidence as was actually submitted to the CO before the date the CO’s determination was issued.” 20 C.F.R. § 655.61(a)(5); *but see, Herder Plumbing, Inc.*, 2013-TLN-00025, slip op. at 4 (Feb. 4, 2013) (“Procedural due process requires that an employer be permitted to respond to the basis for denial where the employer did not previously have the opportunity to establish the relevant facts.”). Here, the CO provided Employer with an opportunity to submit documentation to support its need for eight temporary construction laborers from April 1, 2019, to December 31, 2019. (AF 93-101). Employer neither submitted the 2019 project schedule prior to the CO’s final determination, nor did it allege that it did not have the opportunity to do so. As such, the 2019 project schedule is inadmissible.

Further, the documentation Employer provided in its NOD response does not support Employer’s assertion that it experiences a peakload need from April 1, 2019, to July 31, 2019. Employer’s 2018 payroll records show that it employed more workers, and had more hours worked, in the non-peakload month of March than in the peakload months of April, May, June, and July. The payroll records for 2016 and 2017 similarly fail to show a peakload need in the

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<sup>5</sup>The CO stated that five temporary workers were employed from August to December 2018. However, this number is incorrect as Employer’s 2018 records indicate that four temporary workers were employed during this time.

relevant timeframe. The 2017 records show that it employed more workers in the non-peakload months of January and February than in the peakload months of April and May, and that the non-peakload months of February and March had more hours worked than the peakload month of May. The 2016 records show that the non-peakload months of January, February, and March had more total hours worked than the peakload months of May and June, and that Employer employed more workers during those months than in the peakload months of June and July.

The greater number of workers employed and total hours worked during these months undercuts Employer's assertion that its peakload need begins on April 1, 2019. While Employer contends that May had less hours worked due to it experiencing the highest average precipitation, the CO reasonably determined this contention conflicts with Employer's statement that it experiences a peakload need during the month of May. Further, the CO reasonably requested documentation to support the Employer's specific need for the requested labor and period of need, which Employer failed to provide. Accordingly, I find that the CO did not err in concluding that Employer did not establish a peakload need for the period of April 1, 2019, to July 31, 2019.

### **CONCLUSIONS**

Although the CO denied Employer's request in its entirety, this denial is inconsistent with the CO's finding that Employer demonstrated a peakload need from August to December. As a result, the stated deficiency of "failure to establish the job opportunity is temporary in nature," pursuant to 20 C.F.R. §§ 655.6(a) and (b) does not exist with respect to the August 1, 2019, through December 31, 2019 portion of Employer's period of need.

Pursuant to 20 C.F.R. § 655.54, the CO has the discretion to issue a partial certification by reducing the requested period of need. *See Erickson Framing AZ LLC*, 2016-TLN-00016 (ALJ Jan. 5, 2016) (remanded to permit the CO to determine if a partial certification should be granted for a reduced period of peak load need); *accord, Rowley Plastering*, 2016-TLN-00017 (Jan 15, 2016); *Marimba Cocina Mexicana*, 2015-TLN-00048 (June 4, 2015) (remanded to permit certification for a shorter period of need).

Accordingly, I find that Employer has established a peakload need for four construction laborers from August 1, 2019, to December 31, 2019, but has failed to establish its need for eight construction workers during the requested period of need of April 1, 2019, to December 31, 2019.

### **ORDER**

In light of the foregoing, it is hereby ORDERED that: the Certifying Officer's denial of Employer's application for eight construction laborers is AFFIRMED in part, and REVERSED in part. This matter is REMANDED to the Certifying Officer for further processing. The Certifying Officer is directed to continue processing this application in regard to a partial certification for four construction laborers for a period of need between August 1, 2019, and December 31, 2019.

**SO ORDERED.**

For the Board of Alien Labor Certification Appeals:

SEAN M. RAMALEY  
Administrative Law Judge