



Issue Date: 29 April 2019

**BALCA Case No.:** 2019-TLN-00109  
**ETA Case Nos.:** H-400-19010-016375

*In the Matter of:*

**NexGen – USLBM, LLC DBA Truss Pro’s, Inc.,**  
*Employer.*

Before: DANA ROSEN  
Administrative Law Judge

**DECISION AND ORDER REVERSING CERTIFYING OFFICER’S**  
**DENIAL OF TEMPORARY LABOR CERTIFICATION**

This case is before the Board of Alien Labor Certification Appeals (“BALCA”) pursuant to the Employer’s request for review of the Certifying Officer’s denial in the above-captioned H-2B temporary labor certification matter. 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 Department of Homeland Security, “if there are not sufficient workers who are able, willing, qualified, and available at the time of application for a visa and admission into the United States and at the place where the alien is to perform such services or labor.” 8 CFR §214.2(h)(1)(ii)(D); see also 8 U.S.C. §1101(a)(15)(H)(ii)(b); 8 CFR §214.2(h)(6)(ii)(B); 20 CFR §655.1(a)<sup>1</sup> Employers who seek to hire foreign workers under this program must apply for and receive a “labor certification” from the U.S. Department of Labor (“DOL”). 8 CFR §214.2(h)(6)(iii). Applications for temporary labor certifications are reviewed by a Certifying Officer of the Office of Foreign Labor Certification (“OFLC”) of the Employment and Training Administration (“ETA”). 20 CFR § 655.50. If the Certifying Officer denies certification, in whole or in part, the Employer may seek administrative review before BALCA. 20 CFR §655.53 During the administrative review, only the material contained within the appeal file (“AF”)<sup>2</sup> upon which the denial determination was made may be considered as evidence, while the Employer’s legal argument in its request for review and that legal argument in filed briefs may be considered as argument in the case, 20 CFR §655.61(e).

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<sup>1</sup> The Interim Final Rule revising federal regulations related to the H-2B program, 20 CFR Part 655, Subpart A, was published in Vol. 80 Fed. Reg. No. 82 at 24042 to 24144 (Apr. 29, 2015) and is effective as of April 29, 2015.

<sup>2</sup> “AF” refers to the Appeal File and is followed by the page number of the relevant page in the Appeal File.

## PROCEDURAL HISTORY

On January 10, 2019<sup>3</sup>, the Employment and Training Administration (“ETA”) received an *H-2B Application for Temporary Employment Certification* (ETA Form 9142B) from NexGen - USLBM, LLC DBA Truss Pro’s Inc. (“Employer”). (AF 51-123). On February 28, 2019, the Certifying Officer issued a Notice of Deficiency. (AF 40-49). On March 13, 2019, Employer filed its Response to the Notice of Deficiency. (AF 32-39). On March 20, 2019, the Certifying Officer issued his Final Determination Denying Temporary Employment Certification. (AF 21-31). On April 2, 2019, Employer appealed the Certifying Officer’s Final Determination Denying Temporary Employment Certification and filed its request for Administrative Review. (AF 1-20).

## STATEMENT OF THE CASE

On January 10, 2019, the ETA received an *H-2B Application for Temporary Employment Certification* (ETA Form 9142B) from Employer for 10 “Woodworking Machine Operators” as seasonal workers for employment from April 1, 2019 to December 20, 2019 in Britton, South Dakota. (AF 51-56). The positions were classified as O\*Net Code 51-7042, Woodworking Machine Setters, Operators, and Tenders, Except Sawing, and were to be performed in Britton, South Dakota. (AF 51-56). No specific educational requirement was specified in Section F.b of the application. No training for the job opportunity or employment was required in Section F.b Item 3. (AF 54).

On February 28, 2019, the Certifying Officer issued a Notice of Deficiency identifying the following deficiencies (AF 41-49):

### **Deficiency 1: Failure to establish the job as temporary in nature.**

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The Employer did not sufficiently demonstrate the requested standard of temporary need. The Employer is requesting 10 Woodworking Machine Operators from April 1, 2019 through December 20, 2019, based on a peakload need. In order to establish a peakload need, the Employer must establish that it regularly employs permanent workers to perform the services or labor at the place of employment, that it needs to temporarily supplement its permanent staff at the place of employment due to seasonal or short term demand, and that the temporary additions to staff will not become part of the Employer’s regular operation.

Section B., Item 9 of the ETA Form 9142 indicates the following:

Truss Pro’s Inc.’s need for the woodworking machine operator is temporary and peakload. Because few buildings are started during the cold winter months, it is only during the warm weather months of April through December that Truss Pro’s needs to supplement its permanent staff on a temporary basis. Accordingly, Truss Pro’s is requesting ten (10) workers from April 1, 2019 to December 20, 2019, to ensure they have enough labor to last through the whole busy season, until late in the year when the weather cools and construction work slows down significantly.

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<sup>3</sup> Applications filed after April 29, 2015 with an employment start date of need after October 1, 2015 are processed under the Interim Final Rule revising federal regulations related to the H-2B program published in Vol. 80 Fed. Reg. No. 82 at 24042 to 24144 (Apr. 29, 2015). 20 CFR §655.4(e).

The Employer did not sufficiently demonstrate the requested standard of temporary need. Although the Employer provided 2017 and 2018 payroll reports, it demonstrates that employees worked only during the months of January through October. It provides a total number of workers and hours worked; however it does not clearly distinguish permanent from temporary employees along with hours worked per month.

Furthermore, the Employer is requesting dates of need that extends into the months of November and December which are typically colder months. The average temperatures in these months are below 40 degrees Fahrenheit. Inclement weather is usually experienced more in these months which hinders the ability to perform outside operations such as concrete mixing, setting, and digging.

Additional Information Requested:

1. A statement describing the Employer's (a) business history, (b) activities (i.e. primary products or services), and (c) schedule of operations throughout the entire year;
2. A detailed explanation as to the activities of the Employer's permanent workers in this same occupation during the stated non-peak period;
3. An explanation and documentation to support the weather trends of the Britton, South Dakota area during its peakload months of April through December with an explanation of the jobs that can be performed during these months, when the average temperature is below 40 degrees;
4. A summary listing of all projects in the area of intended employment for the previous calendar years. The list should include start and end dates of each project and worksite addresses;
5. Summarized monthly payroll reports for the 2017 and 2018 calendar years that identify, for each month and separately for full-time permanent and temporary employment in the requested occupation Woodworking Machine Operators, 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
6. 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 Notice of Deficiency. In lieu of the documents requested, the Employer must submit any other evidence and documentation relating to the Employer's current business activities and the trade industry that similarly serves to justify the dates of need being requested for certification. (Emphasis in Original).

**Deficiency 2: Failure to establish temporary need for the number of workers requested.**

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The Employer has not sufficiently demonstrated that the number of workers requested on the application is true and accurate and represents bona fide job opportunities.

In its current application, H-400-19010-016375, the Employer is seeking certification for 10 Woodworking Machine Operators from April 1, 2019 through December 20, 2019. The Employer previously received certification for 6 Woodworking Machine Operators from April 1, 2018 to December 22, 2018 in its previously submitted application, H-400-18165-222769. The Employer is therefore requesting an increase of four in the total number of workers requested.

The Employer did not sufficiently demonstrate its need for four additional workers during the requested period of need. Further explanation and documentation is requested in order to establish the Employer's need for a total of 10 workers.

The Employer submitted a 2017 through 2018 payroll report in support of its application; however it does not distinguish the permanent and temporary employees along with the hours that each group worked per month. The payroll reports reflect inconsistencies in the Employer's business activities, specifically in the months of April, May, June, September, and October, employees did not work full time hours. There were no employees reported in November and December. Additionally, the Employer did not sign the report; which attests to its accuracy.

Furthermore, the Employer is basing its need on increase in demand for business; however the Employer did not provide contracts to demonstrate increase in demand.

Additional Information Requested:

1. An explanation with supporting documentation of why the Employer is requesting 10 Woodworking Machine Operators for Britton, South Dakota during the dates of need requested;
2. If applicable, documentation supporting the Employer's need for 10 Woodworking Machine Operators such as contracts, letters of intent, etc. that specify the number of workers and dates of need;
3. Summarized monthly payroll reports for a minimum of two previous calendar years that identify, for each month and separately for full-time permanent and temporary employment in the requested occupation, 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.

**Deficiency 3: Failure to submit an acceptable job order**

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The Employer submitted a copy of its job order with its application to the CNPC. However, the job order did not include the following required information:

# In Section F. Items A. 3., of the ETA Form 9142, the Employer lists its work schedule of 6:00 am to 4:30 pm; while body of the job order lists 7:00 am to 4:30 pm Monday through Friday and 4:30 pm to 4:00 am with up to 5 hours of "overtime may be available but is not guaranteed." The words "overtime may be available but is not guaranteed" indicates that the job opportunity offers excessive hours; which is not in compliance with departmental regulations. It is unclear whether the job schedule splits shifts.

# The "Shift hours" box indicates work hours of 6 am to 5 pm. This is inconsistent with the work schedule on its application and the hours are excessive.

# The additional shift hours and work day notes, indicates that the work schedule is 6 am to 4:30 pm Monday through Friday and 4:30 pm to 4:00 am Monday through Thursday. This is inconsistent with its submitted Form 9142. It is unclear whether the job schedule includes split shifts.

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Additional Information Requested:

In order to be in compliance with the above regulations, the Employer must submit an amended job order language which includes the following required information:

#The Employer must amend its application and job order to reflect a normal work schedule of 6:00 am to 2:00 pm with appropriate overtime hours or indicate that 6:00 am to 4:30 pm includes split shifts.

#The Employer must remove the words “with up to 5 hours of overtime may be available but is not guaranteed”; to reflect a regular work schedule.

The Employer’s NOD response must include corrected language which remedies this deficiency so that the Chicago NPC can provide this information to the SWA.

OR

The Employer may submit an already-amended job order that contains all of the required language indicated above.

On March 13, 2019, the Employer’s Response to the Notice of Deficiency was received at the Chicago National Processing Center. (AF 32-39). Employer’s response included signed payroll records from 2017 and 2018 that indicated the number of permanent workers employed, total hours worked by permanent workers, total earnings received by permanent workers, the number of temporary workers employed, total hours worked by temporary workers, and total earnings received by temporary workers. (AF 33). Employer’s response included monthly production numbers from January 2006 to February 2019. (AF 34). Employer’s response included a letter describing Employer’s business history and activities, schedule of operations through the year, activities of Employer’s permanent workers during the non-peak period, explanation of weather trends in Britton, South Dakota, summary of all projects in the area of intended employment for the previous two calendar years, and an amendment to Section F.A., Item 2 or 5 in Form 9142. (AF 35-39).

On March 20, 2019, the Certifying Officer denied the Application for Temporary Employment Certification for 10 Woodworking Machine Operators stating Employer did not meet the requirements specified in 20 CFR 655, Subpart A. The Certifying Officer set forth the following reasons for the denial of the application (AF 25-31):

**Deficiency 1: Failure to establish the job as temporary in nature.**

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In response to the NOD, the Employer submitted (1) a cover letter; (2) a Response to Notice of Deficiency letter; (3) 2017 to 2018 payroll reports; and (4) Truss Board Footage (of Trusses Produced) Comparison Chart 2006-2019.

The Employer’s explanation and documentation that its need for 10 Woodworking Machine Operators is temporary in nature, did not overcome the deficiency.

Based on the Employer’s response and submitted weather reports, the Employer has applied for a peakload standard of need based its operational demand weather dependent. The Employer states, “Foundations will be poured for projects when the temperature is above 40 degrees. After this, framing can be erected. It is only after foundations are poured and framing is erected that the products produced by Truss Pro’s Inc. are needed.” The Employer explains that work begins in the months when temperatures are typically warmer and concludes in colder months. However, the Employer did not provide documentation to substantiate that its workload is tied to weather conditions. This information would have been useful to support its statement regarding weather conditions in Britton, SD during peakload and non-peakload months.

In addition, the Employer submitted its 2017 to 2019 payroll reports; which demonstrates that permanent employees worked all year-round in 2017 and 2018. Conversely, in 2017 to 2018 the temporary employees did not work until June through December. The Employer's dates of need commence in April and conclude in December, however the payroll reflects that the temporary employees did not work April and May; which is during the Employer's requested dates of need.

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Furthermore, the payroll indicates that employees did not work full time hours June, November, and December. The Employer attributes the decrease of hours in November and December to the holiday; however that does not explain the lack of full time hours in June and no temporary workers in April and May.

Additionally, the Employer provided a Truss Pro's Board Footage (Of Trusses Produced) Comparison Chart from 2006-2019, to substantiate its request based on a peakload need. In 2018, the chart demonstrates that production is lowest January to April then consistently fluctuates from May to November and it decreases in December. Thus, the Employer has not demonstrated a peakload standard of need for 10 Woodworking Machine Operators from April 1, 2019 to December 20, 2019 in Britton, SD.

**Deficiency 2: Failure to establish temporary need for the number of workers requested.**

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In response to the NOD, the Employer submitted (1) a cover letter; (2) a Response to Notice of Deficiency letter; (3) 2017 to 2018 payroll reports; and (4) Truss Board Footage (of Trusses Produced) Comparison Chart 2006-2019.

The Employer provided summarized 2017 to 2018 monthly payroll reports to substantiate its request for 10 Woodworking Machine Operators during the dates of April 1, 2019 to December 20, 2019, however, the payroll demonstrates that the temporary employees did not work in April and May; which is during the Employer's requested dates of need. Thus, this documentation is not useful to determine the Employer's requested need for 10 workers.

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The payroll indicates that employees did not work full time hours June, November, and December. The Employer attributes the lack of hours in November and December to the holiday; however that does not explain the lack of full times hours for temporary workers in June and no temporary workers in April and May. Alternatively, permanent employees worked all-year round and had slight fluctuations in hours worked. Thus, the payroll did not substantiate its peakload request for 10 workers.

Additionally, the Employer provided a Truss Pro's Board Footage (Of Trusses Produced) Comparison Chart from 2006-2019, to substantiate its request based on a peakload need. The Employer states "from February to April, there was a 126% increase in production and from March to April there was a 24% increase in production. Production again stays high through December, and then drops by 15% from December 2018 to January 2019." However, this increase in production is not reflected in the number of hours temporary employees worked. Thus, this documentation was not useful.

The Employer's response to the Notice of Deficiency letter indicated that it had other documentation to substantiate its request for 10 Woodworking Machine Operators during the dates of April 1, 2019 to December 20, 2019. This documentation would have provided a further

explanation to support its request; however the Employer did not provide such documentation. It is unclear how the Employer determined its need for 10 workers.

Thus, the Employer did not provide a substantial explanation or documentation to support its need for 10 Woodworking Machine Operators. The Employer failed to establish a temporary need for the number of workers, as requested.

On April 2, 2019, the Employer filed a timely formal request for administrative review of the Certifying Officer's denial. (AF 1-20). In its "Request for Administrative Review," Employer argued its application was "arbitrarily and capriciously" denied although Employer submitted all documentation requested in the Notice of Deficiency. Employer argued that although it did not provide weather data, Employer provided an explanation of how winter is not ideal for construction and the truss production chart showed the least production occurred during the winter months of the year and production increases during the warmer months of the year. (AF 2-3). Employer argued that had more specific information been requested by the Certifying Officer in the Notice of Deficiency regarding inconsistencies in the payroll records, Employer would have explained that the temporary workers did not arrive until June due to H-2B visa processing, which accounted for no temporary workers during the months of April and May. (AF 4). Employer explained that it offered workers 45 work hours weekly, but the payroll records did not reflect that some employees chose not to work the 45 hours offered to them due to vacations, sickness, terminations, and abandonments. (AF 4). Employer argued that it has received labor certification in the previous two years for the same position in the same worksite location under "substantially identical circumstances." (AF 6).

## DISCUSSION

An Employer seeking certification to employ H-2B foreign workers bears the burden to establish eligibility for issuance of a requested temporary labor certification. The Employer must establish that the "number of worker positions and period of need are justified, and that the request represents a bona fide job opportunity." 20 C.F.R. 655.11(e)(3) and (4).

Where an Employer has submitted an application for temporary labor certification of H-2B workers and that application fails to meet all the obligations required by 20 CFR Part 655 or other requirements of the H-2B program, the Certifying Officer issues a Notice of Deficiency to the Employer setting forth the deficiency in the application and permitting the Employer to submit supplemental information and documentation for consideration before issuance of a final determination on the application. 20 CFR §655.31(b). BALCA may only consider the documentation considered by the Certifying Officer in its final denial determination as contained in the Appeal File. BALCA may also consider the arguments set forth in the Request for Administrative Review and legal briefs submitted to BALCA. 20 CFR §655.61(e).

Based upon the evidence in the Appeal File and the arguments presented, the Certifying Officer's Final Determination Denying Temporary Labor Certification is reversed.

On March 13, 2019, Employer filed its Response to the Notice of Deficiency. Employer addressed the three identified deficiencies by submitting written explanations, payroll records, charts regarding Employer's two previous business years, and amendments to its Form 9142.

In its Response to Notice of Deficiency, the Employer submitted statements describing the Employer's business history and activities as requested by the Notice of Deficiency. Employer submitted payroll records from 2017 and 2018 that reflected the number of permanent and temporary employees on staff, the total hours worked by each, and the total earnings received by each. (AF 33). From June to December 2017, Employer had 11-14 temporary employees who worked a total of 823 to 2217 hours monthly. (AF 33). From June to December 2018, Employer had 14-19 temporary employees who worked a total of 1869 to 3912 hours monthly. (AF 33).

In the Notice of Deficiency, the Certifying Officer required, "An explanation and documentation to support the weather trends of the Britton, South Dakota area during the peakload months of April through December with an explanation of the jobs that can be performed during these months, when the average temperature is below 40 degrees." (AF 13). In its Response to the Notice of Deficiency, Employer explained that it cannot complete construction in temperatures below 40 degrees. (AF 2). In the Final Determination, the Certifying Officer acknowledged Employer's explanation that cold temperatures below 40 degrees precluded Employer from pouring foundations and erecting framing necessary for its products. However, in the Final Determination, the Certifying Officer determined that did not substantiate Employer's temporary need due to weather in Britton, South Dakota. Based on the evidence in the record and the arguments, significant weight is given to Employer's credible explanation regarding weather restrictions and its temporary need.

In both the Notice of Deficiency and Final Determination, the Certifying Officer stated the payroll records did not overcome the deficiencies and show that the job opportunity was temporary in nature and did not establish temporary need. (AF 12-15). In the Final Determination, the Certifying Officer stated the Employer did not explain why temporary employees worked from June to December instead of during the requested dates of need, April through December. (AF 14). In its appeal, Employer explained why there were no temporary workers in April and May. (AF 4). Employer stated that it employed no temporary workers during those months because there was a delay in the processing of the H-2B visas both years. (AF 4). In 2018, Employer recruited Belizean workers, but midway through processing, Belize was removed from the list of acceptable countries for H-2B worker recruitment. (AF 4). Employer had to find workers from a different country and learn the consulate process of a new country. (AF 4-5). The Certifying Officer did not specifically ask for an explanation regarding April and May workers. However, Employer sufficiently provided information in its appeal explaining that there were no temporary employees in April and May due to the changed H-2B worker list and a scramble for new recruitment from a different country. Based on the evidence in the record and the arguments, the court gives significant weight to Employer's compelling and credible explanation provided in its appeal as to why no temporary workers were on employed in April and May.

In the Final Determination, the Certifying Officer stated the payroll records indicated employees did not work full time hours in June, November, and December. (AF 4). In its appeal, the Employer submitted more detailed payroll reports from 2017 and 2018 that included the days worked per month, the number of pay periods per month, and the number of employees that worked fewer hours than the total number of hours offered and available. (AF 8). From July through December of both calendar years, Employer employed at least ten employees who

worked fewer than the total number of hours available. (AF 8). In 2017, 11 employees worked fewer hours than the total number available in June, 19 employees worked fewer hours than the total number available in November, and 10 worked fewer hours than the total number of hours available in December. (AF 8). In 2018, 7 employees worked fewer than the total number of hours available in June, 21 employees worked less than the total number of hours available in November, and 25 worked fewer hours than the total number of hours available in December. (AF 8). Employer stated that employees were offered 45 hours of work per week, but some employees chose not to work the full 45 hours due to vacations, sickness, terminations, abandonments, or lack of desire to work full-time. (AF 4). Employer stated, “There can also be a lack of hours worked between when a worker quits and his or her replacement arrives to work due to how long it takes to find replacements.” (AF 4). Based on the evidence in the record and the arguments presented, the court gives significant weight to Employer’s credible documentation and explanation in its appeal regarding the hours worked.

The Certifying Officer required the Employer to submit payroll records from the two previous calendar years to cure the deficiencies listed in the Notice of Deficiency. Employer subsequently submitted the payroll records signed by the President, Luke Kraft. (AF 8). The payroll records reflected that Employer employed temporary workers during its season of peakload need for the two previous calendar years. (AF 8). Employer offered a 45-hour work week to its temporary workers, but some employees worked less than the 45-hour work week due to various reasons. Based on the evidence in the record and the arguments presented, the court finds the payroll records are sufficient evidence that Employer has a seasonal, peakload need for temporary workers.

In the Final Determination, the Certifying Officer stated the Truss Pro’s Board Footage (of Trusses Produced) Comparison did not overcome the deficiencies because the comparisons showed fluctuations in production during the months of requested need. (AF 15). In 2017, Employer produced 1,230,105 trusses in January, 863,059 trusses in April, 1,859,453 trusses in August, 1,372,362 trusses in October, and 892,924 trusses in December. (AF 34). In 2018, Employer produced 963,203 trusses in January, 897,649 trusses in April, 1,861,863 trusses in August, and 900,000 trusses in December. (AF 34). In 2017 and 2018, between 397,204 and 855,530 trusses were produced in February and March, which is considered to be Employer’s non-peak season. (AF 34). In 2019, Employer produced 768,479 trusses in January and 438,228 trusses in February. (AF 34).

In its appeal, Employer argued that “just because there is fluctuation in the peakload production and a decrease in December does not mean that the amount of production during its peakload period is not peakload.” Employer argued that production is still higher even with the fluctuations in the peakload months than it is in the non-peakload months. (AF 3-4). Additionally, this production trend extended beyond the two previous calendar years. Based on the comparison chart, Employer has had a peakload season since 2006. (AF 34). Based on the evidence in the record and the arguments presented, the court finds the Truss Pro’s Board Footage (Of Trusses Produced) Comparison is sufficient evidence that Employer has a peakload need for temporary workers. While there are fluctuations within the months Employer considers to be peakload (April through December), Employer produces more during those months than it does during the months it considers to be non-peakload (January through March).

In the Final Determination, the Certifying Officer stated Employer did not substantiate its need for 10 temporary workers. In its Response to the Notice of Deficiency, Employer provided a calculation as to how it determined the need for 10 temporary woodworking machine operators for the 2019 peakload season. (AF 5). The calculations were based upon the board production and how many employees would be needed per square foot. (AF 5). Employer argued that using those calculations, 26 temporary workers were actually needed, such that 10 temporary workers were a “modest request.” (AF 5). Instead of considering this calculation, the Certifying Officer considered the payroll records that reflected the number of hours the temporary workers worked in the previous two years. (AF 5-6). As discussed in detail above, Employer explained in its appeal that temporary workers were given the opportunity to work 45 hours weekly, but often did not do so. Based on the evidence in the record and the arguments presented, the court finds that Employer established a temporary need for the number of workers requested and cured the deficiency by submitting the calculation as to how it determined its need for temporary workers, the payroll records, and the comparison chart.

In Employer’s appeal filed on April 2, 2019, Employer argued it submitted an identical application and received a labor certification by the United States Department of Labor for the previous two calendar years. (AF 6). Employer argued the applications were all “substantially identical circumstances.” (AF 6). While Employer’s argument has merit, there is no evidence in the record to review regarding Employer’s previous applications and labor certifications.

After review of the Appeal File and the arguments, this Administrative Law Judge finds that the payroll records, statements, summaries, and reports are sufficient evidence to satisfy the deficiencies. The court approves the Employer’s January 10 2019, *Application for Temporary Employment Certification* for the requested additional ten temporary woodworking machine operators for the dates of need from April 1, 2019 through December 20, 2019 pursuant to 20 CFR §655.31(c) and §655.51.

## **ORDER**

It is hereby **ORDERED** that:

1. Certifying Officer’s DENIAL of the Employer’s January 10, 2019, *Application for Temporary Employment Certification* is **REVERSED**.
2. Employer corrected the deficiencies set forth by the Certifying Officer on February 28, 2019, pursuant to the Departmental regulations at 20 C.F.R. 655.11(e)(3) and (4).

3. This matter is **REMANDED** to the Certifying Officer for further processing consistent with this decision.

For the Board:

DANA ROSEN  
Administrative Law Judge

DR/CN/mjw  
Newport News, VA