

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 22 May 2012

OALJ Case No.: 2012-TLC-00071

ETA Case No.: C-12122-34328

In the Matter of:

ZIRKLE FRUIT COMPANY,

Employer.

Certifying Officer: William L. Carlson
Chicago Processing Center

ORDER OF DISMISSAL

This case arises under the temporary agricultural labor provisions of the Immigration and Nationality Act of 1952 (Act), 8 U.S.C.A. § 1101(a)(15)(H)(ii)(a) and §1184(c)(1), as amended, and its implementing regulations found at 20 CFR Part 655, Subpart B.

By the Certifying Officer's (CO) "Notice of Deficiency" of May 8, 2012, the CO found that the Employer's "Application for Temporary Employment Certification" (ETA 9142) impermissibly involved an application from a single employer for more than one area of intended employment (ETA Case no. C-12122-34328). Employer's counsel filed an appeal of the "Notice of Deficiency" on May 10, 2012. Employer's counsel submits that the ETA 9142 was an "emergency application" and "should have not been considered by the Certifying Officer since a non-emergency Application for Temporary Labor Certification ... from this employer is currently under de novo review by this Court, OALJ No. 2012-TLC-00064 ... involving the very same issues raised in the Notice of Deficiency." It is noted that the Parties represented at the formal hearing in OALJ Case No. 2012-TLC-00064, that the application identified as C-12122-34328 had been submitted as part of settlement negotiations between the Parties.

On May 18, 2012 the Parties filed a joint “Stipulation of Dismissal” in this case. The Parties stipulated that:

1. The Certifying Officer for the U.S. Department of Labor and the named petitioners have settled Cases Nos.2012-TLC-64, 2012-TLC-70, and 2012-TLC-71.
2. All issues raised by these cases have been resolved. As modified to remove the Rock Island/CRO, Pateros/Azwell, and Okanogan/JAW worksites, the application (C-12094-33924) that gave rise to Case No. 2012-TLC-64 will be accepted for processing.
3. Petitioner agrees to modify the application (C-12122-34327) which gave rise to 2012-TLC-70, so that the application references only the following locations: Rock Island/CRO, Pateros/Azwell, and Okanogan/JAW. With this modification, application C-12122-34327 (2012-TLC-70) will be accepted for processing.
4. Petitioner withdraws the application (C-12122-34328) which gave rise to 2012-TLC-71, upon entry of an Order confirming this stipulation. Petitioner’s Request for *De Novo* Hearing with respect to this file is therefore withdraw as moot.

The Parties “request that the Court enter an Order consistent with the parties’ stipulation.”

In that the Employer, through counsel, has withdrawn the request for de novo hearing prior to a formal hearing, the request for de novo hearing is **DISMISSED WITH PREJUDICE**, pursuant to 5 U.S.C. §556(c) and 29 CFR §18.29.

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ALAN L. BERGSTROM
Administrative Law Judge

ALB/jcb
Newport News, Virginia