



**Issue Date: 19 November 2012**

**BALCA Case No.: 2013-TLC-00002**  
ETA Case No.: C-10347-25783

*In the Matter of:*

**TALBOTT'S HONEY LLC,**

*Employer*

Certifying Officer: William L. Carlson  
Chicago National Processing Center

Before: **WILLIAM S. COLWELL**  
Associate Chief Administrative Law Judge

### **DECISION AND ORDER**

This matter arises under the temporary agricultural labor or services provision of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(ii)(a), and the associated regulations promulgated by the U.S. Department of Labor (“the Department”), Employment and Training Administration (“ETA”) at 20 C.F.R. Part 655. This Decision and Order is based on the written record, consisting of the Appeal File (“AF”) forwarded by the Employment and Training Administration, and the written submissions of the parties.

### **BACKGROUND**

On January 13, 2011, Talbott’s Honey LLC (“the Employer) obtained H-2A temporary labor certification for twelve “Farm Workers and Laborers” beginning February 4, 2011 and ending December 4, 2011. AF 79-82.<sup>1</sup> On May 18, 2012, several months after this certification expired, the Certifying Officer (“CO”) issued a Notice of Audit Examination informing the Employer that it had been selected for audit. AF 73-76. The CO directed the Employer to submit documentation supporting the attestations it had made in support of this certification, including documentation of its recruitment efforts. (AF 73-76). AF 74-75. The Employer

---

<sup>1</sup> Citations to the 122 page appeal file will be abbreviated “AF” followed by the page number.

responded on June 1, 2012, providing, *inter alia*, copies of the following newspaper advertisements:

1. An ad placed in the Wednesday January 19, 2011 edition of the Iowa Clayton County Register (AF 61);
2. An ad placed in the Friday January 14, 2011 edition of the Texas Dalhart Texan. (AF 60);
3. An ad placed in the Saturday January 15, 2011 edition of the New Mexico Hobbs News-Sun (AF 57);
4. An ad placed in the Friday January 14, 2011 edition of the New Mexico Hobbs News-Sun. (AF 56)

AF 55-72. Upon review, the CO found that: (1) none of the advertisements were placed in a newspaper serving the area of intended employment listed in the Employer's application (Kimball, South Dakota); and (2) none of the advertisements ran on a Sunday. AF 50. Accordingly, the CO concluded that the Employer had not established compliance with the recruitment requirements at 20 CFR 655.151(a) and 20 CFR 655.152, which require an employer to place two advertisements in a newspaper of general circulation in the area of intended employment, one of which must be on a Sunday.

On July 21, 2012, the CO issued a Request for Supplemental Information ("RSI") citing the above deficiencies and directing the Employer to submit "documentary evidence that newspaper advertisements were placed on two separate days, one of which must be a Sunday, in the area of intended employment (Kimball, South Dakota)." AF 50-51. In response to this request, the Employer submitted an advertisement that was published in the Sunday, January 8, 2012 edition of the *Dickinson Press* in North Dakota. AF 16. The CO issued a second RSI on Aug 15, 2012, noting that the *Dickinson Press* advertisement was published in January 2012, and thus non-responsive to the audit request and RSI, which sought documentation related to the Employer's 2011 H-2A recruitment. The CO again requested documentation of the advertisements published in connection with the Employer's 2011 H-2A certification. AF 10-11. The Employer's response did not include the requested documentation. AF 9.

Based on the Employer's failure to demonstrate that its 2011 H-2A application complied with 20 CFR 655.151(a) and 20 CFR 655.152, the CO issued a Notification of Required Special Procedures ("NRSP") on September 12, 2012, imposing special procedures on any H-2A application the Employer filed in the next two years. AF 2-5. In particular, these special procedures required the Employer to submit copies of all newspaper advertisements run in support of its application to ETA's Chicago National Processing Center prior to the issuance of a final determination. AF 5.

By letter dated September 26, 2012, the Employer requested administrative review of the CO's imposition of special procedures. AF 1.<sup>2</sup> The Employer maintained that *The Mitchell Daily Republic*, the newspaper in which it intended to run its advertising, was in the process of being purchased and the Employer's ad "somehow 'fell thru the cracks.'" *Id.* The Employer

---

<sup>2</sup> OALJ did not receive a complete copy of the Appeal File on November 9, 2012.

stated that while it “completely understand[s] the requirements of the program,” it made “a good faith effort” to fulfill the regulatory requirements, since the missing advertisements were “an unfortunate event that occurred during the transaction of the newspaper.”<sup>3</sup>

## **DISCUSSION**

The CO may require an employer to follow special requirements during its recruitment process if the employer is guilty of a less than substantial violation of the terms of its labor certification, and the CO determines that past actions on the part of the employer may have had or may continue to have a chilling effect on U.S. workers. 20 C.F.R. § 655.183; *see also* 75 Fed. Reg. 6938 (February 12, 2010). The record reveals that the Employer’s 2011 H-2A application did not comply with the newspaper advertising required at 20 CFR 655.151(a) and 20 CFR 655.152. Even if, as the Employer argues, it made a good faith effort to publish the required advertisements, the record reveals that these newspaper advertisements were not published. As a result, U.S. workers were not adequately apprised the job opportunities filled by the Employer’s H-2A workers. Based on this violation, the CO reasonably required the Employer to submit proposed newspaper advertisements prior to the issuance of a final determination. Such a requirement does not appear overly burdensome, and allows the CO to confirm whether the required advertising was published (and thus whether U.S. workers were adequately informed of the available job opportunities) prior to certifying the Employer’s application.

## **ORDER**

In light of the foregoing discussion, it is hereby ORDERED that the Certifying Officer’s decision requiring Talbot Honey to conform to special procedures for a period of two years is **AFFIRMED**.

**WILLIAM S. COLWELL**

Associate Chief Administrative Law Judge

---

<sup>3</sup> It is unclear whether the Employer is referring to the January 2012 advertisement, or the ads placed in conjunction with its H-2A certification from February 4, 2011 to December 4, 2011 (the certification currently under audit).