



Issue Date: 14 December 2012

OALJ Case No: 2013-TLC-00012
ETA Case No: C-12318-36044

In the Matter of:

SERVICIOS UNIVERSAL MP, *agent for,*
MARIA PEREZ,
Employer

Certifying Officer: William L. Carlson
Chicago Processing Center

**DECISION AND ORDER -- AFFIRMING CERTIFYING
OFFICER'S DENIAL OF TEMPORARY LABOR CERTIFICATION**

On December 3, 2012, Maria Perez (“the Employer”) filed a request for review of the Certifying Officer’s determination in the above-captioned temporary agricultural labor certification matter. *See* 8 U.S.C. §§ 1101(a)(15)(H)(ii)(a), 1184(c)(1); 20 C.F.R. § 655.115(a) (2009). On December 10, 2012, the Office of Administrative Law Judges received the Administrative File from the Certifying Officer (“the CO”). In administrative review cases, the administrative law judge has five working days after receiving the file to “review the record for legal sufficiency” and issue a decision. § 655.115(a).

STATEMENT OF THE CASE

On November 13, 2012, the United States Department of Labor’s Employment and Training Administration (“ETA”) received an application from Employer for temporary labor certification. AF 62.¹ In particular, Employer requested certification for 74 “Farm Workers” between January 1, 2013 and March 15, 2013. AF 62. The Employer noted on its application that the nature of its temporary need was seasonal. *Id.* In explanation of its need, the Employer provided that it was “REQUESTING 74 FARM WORKERS TO HARVEST GATHER COUNT AND PACKAGE CABBAGE COLLARDS AND GREENS.” AF 62.

On November 20, 2012, the CO sent a Notice of Deficiency (“NOD”), which identified eight deficiencies. AF 28-35. As Employer and the CO continued to communicate regarding the deficiencies, the CO discovered that Employer had been debarred from the TLC program and forwarded copies of the notice of debarment letters dated October 17, 2012 and November 21, 2012. AF 14-18. The notice of debarment dated October 17, 2012 noted that Employer had been granted certification under the H-2A program on August 13, 2012, but had not paid the

¹ Citations to the 89-page Administrative File will be abbreviated “AF” followed by the page number.

associated fee. AF 17. The Notice further stated that Employer had been issued a notice of debarment on July 12, 2012 that had been subsequently waived after Employer made an untimely payment. Employer was put on notice that she must submit evidence to rebut the ground of the debarment or request a hearing within 30 days or the debarment would become the final decision of the Secretary and take effect on November 16, 2012. AF 17-18.

On November 27, 2012, the CO denied the Employer's application for temporary labor certification. AF 10-13. Citing to 20 C.F.R. 655.182(a), the CO found that the Employer had been debarred from the H-2A program for one year to run from November 16, 2012 until November 15, 2013. AF 13. Therefore, the CO denied certification. The Employer's appeal followed.

DISCUSSION

20 C.F.R. § 655.182(a) states as follows:

(a) *Debarment of an employer.* The OFLC Administrator may debar an employer or any successor in interest to that employer from receiving future labor certifications under this subpart, subject to the time limits set forth in paragraph (c) of this section, if the OFLC Administrator finds that the employer substantially violated a material term or condition of its temporary labor certification, with respect to H-2A workers, workers in corresponding employment, or U.S. workers improperly rejected for employment, or improperly laid off or displaced.

Section 182(d)(2) includes failure to timely pay a certification fee as a violation within the meaning of Section 182(a).

Section 182(f) states:

Debarment procedure (1) Notice of Debarment. If the OFLC Administrator makes a determination to debar an employer, attorney, or agent, the OFLC Administrator will send the party a Notice of Debarment. The Notice will state the reason for the debarment finding, including a detailed explanation of the grounds for and the duration of the debarment, and it will inform the party subject to the Notice of its right to submit rebuttal evidence or to request a debarment hearing. If the party does not file rebuttal evidence or request a hearing within 30 calendar days of the date of the Notice of Debarment, the Notice will be the final agency action and the debarment will take effect at the end of the 30-day period.

Here, Employer received a notice of debarment on October 17, 2012, but did not take any action until November 27, 2012 when Employer's agent sent the CO an email asking who to contact regarding the debarment letter and was informed that the time frame for responding had passed. AF 9. Employer sent in a check for the amount overdue on November 28, 2012, along with copies of a check dated March 1, 2012 and a letter from ETA stating that Employer's account had been paid in full dated March 26, 2012. Both the check and the March 26, 2012 letter reference case number C-11179-29640. AF 5-8. Employer argues that checks were sent for

all due payments, including at least one check that was returned because the balance had been paid. In the alternative, Employer offers to make payment to bring her account balance to zero.

Although Employer argues that she made timely payment on the account in question, the checks submitted contain reference numbers to case number C-11179-29640. The notice of debarment, however, was sent in reference to case number C-12181-35180. Accordingly, the record indicates that Employer never made the required payment on case number C-12181-35180 and so violated the regulations. Because Employer violated the regulations, the notice of debarment was appropriate. Employer failed to respond to the notice within 30 days, making the notice the final agency action under Section 182(f). Accordingly, Employer is debarred from the H-2A program for a period of one year beginning on November 16, 2012 and the CO properly denied certification of the application on November 27, 2012.

ORDER

In light of the foregoing, it is hereby **ORDERED** that the Certifying Officer's decision is **AFFIRMED**.

DANIEL A. SARNO, JR.
District Chief Administrative Law Judge

DAS,JR./JRS/jcb
Newport News, Virginia