

UNITED STATES DEPARTMENT OF LABOR
BOARD OF ALIEN LABOR CERTIFICATION APPEALS
Washington, DC

Issue Date: 20 June 2023

OALJ Case No.: 2023-TLC-00040
ETA Case No.: H-300-23055-801274

In the Matter of:

EARL'S FLYING SERVICES, LLC,

Employer.

Certifying Officer: Srdzan Lazarevski,
Chicago National Processing Center

Appearances:

Wendel V. Hall, Esquire
Hall Global,
Washington, D.C.
For the Employer

Rebecca Nielson, Esquire
Office of the Solicitor
U.S. Department of Labor
Washington, DC
For the Certifying Officer

Before: Steven D. Bell
Administrative Law Judge

Order Denying Motion for Reconsideration

Employer has submitted a motion for reconsideration of my June 5, 2023 Decision and Order Affirming Denial of Temporary Labor Certification. Employer's Motion for Reconsideration argues that the Court should not have considered details that the certifying officer ("CO") did not rely on and that the Court "failed to limit its review of the CO's decision to the reasons articulated by the CO."¹ Employer has argued that this Court erred because it "did not defer to USDA's greater expertise" and that the address listed on the USDA notification is unrelated to Farm 1733.²

¹ Employer's Motion for Reconsideration ("Emp. Mot.") at 1-3.

² *Id.* at 3-7.

Contrary to Employer's assertion, the regulations provide that this court must consider all the evidence submitted at the hearing upon a request for a de novo hearing.³ The evidence submitted at the hearing included the USDA's notification regarding Farm 1733, which was sent to a different address than Employer's identified worksite, and which was submitted by Employer.⁴ In addition, this Court did in fact limit its review to the issues upon which the CO made its determination, namely whether the work at issue was agricultural and whether it would take place on a farm.

This Court made no finding regarding the validity of the USDA's determination that Farm 1733 was a farm, but only determined that the primary worksite identified by Employer was not a part of that farm. Employer has now attempted to submit new evidence regarding the location of the address on the USDA notification. However, this Court may not consider evidence that has not been submitted during the hearing.⁵ Contrary to Employer's argument that it never had the opportunity to address the facts relied upon in the CO's brief,⁶ all of the CO's arguments and this Court's findings were based on evidence properly submitted during the hearing. I therefore decline to reconsider my decision.

Employer's Motion for Reconsideration is hereby **DENIED**.

For the Board:

Steven D. Bell
Administrative Law Judge

³ 20 C.F.R. § 655.171(e)(2)

⁴ Employer's Exhibit ("EX") 2.

⁵ 20 C.F.R. § 655.171(e)(2)

⁶ Emp. Mot. at 2.