U.S. Department of Labor

Board of Alien Labor Certification Appeals
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Issue Date: 01 February 2023

In the Matter of:

Maligaya Development Eco-Farm, LLC
Employer.

BALCA Case No. 2023-TLC-00014
ETA Case No. H-300-22299-552134

Before: Dierdra M. Howard
Administrative Law Judge

ORDER DENYING MOTION TO RECONSIDER

On October 31, 2022, Maligaya Development Eco-Farm, LLC ("Employer"), by and through counsel, filed an application for temporary employment certification ("Application"). On December 7, 2022, the Certifying Officer ("CO") at the Employment and Training Administration within the Chicago National Processing Center issued a Final Determination denying the Employer's Application.

On January 11, 2023, the Undersigned issued a Notice of Assignment and Expedited Briefing Schedule ("Notice"). Therein, the Undersigned found that in accordance with 20 C.F.R. § 655.171(a)(4), Employer waived its right to a hearing as it did not clearly state that it was seeking *de novo* review. Accordingly, the case proceeded as a request for administrative review.

On January 18, 2022, I issued a Decision and Order Affirming Denial of Certification and on January 26, 2023, Employer re-filed its *Motion to Reconsider* ("Motion").[1] In its Motion, Employer contends that its appeal was mischaracterized as a request for review on the record as opposed to *de novo* review. Employer asserts that the phrasing in its request for appeal, in addition to "the new evidence referenced throughout and submitted simultaneously therewith, unequivocally demonstrated a request for *de novo* review."[2] (Motion at 2-3). Furthermore, Employer avers that the mischaracterization of its appeal "was compounded by the failure to properly provide service in a timely manner to the Agent of record…." (Motion at 3). Employer maintains that had it directly received the Notice, it would have corrected the error at an earlier time.

[1] Employer initially filed the Motion on January 20, 2023, at OALJ-Filings@dol.gov and was instructed to re-submit.
[2] Employer is referencing its statement that "[i]f necessary, the employer is prepared to submit additional evidence for de novo review."

On January 24, 2023, the CO opposed the Motion, averring that Employer did not clearly state its request for a *de novo* hearing. In support of its position, the CO offered Employer's own statement in its Motion, that its request "was arguably insufficiently explicit." (Motion at 3). The CO further asserts that Employer's request was phrased conditionally and, as such, could not be construed as stated clearly. Concerning the delayed service of the Notice, the CO underscored the expedited nature of H-2A applications.

Upon consideration of the foregoing, I find that Employer's Motion is unpersuasive. Specifically, Employer did not request a *de novo* review with the requisite clarity. Additionally, there is no indication that Employer was uninformed regarding its ability to request *de-novo* review or was prevented from doing so. Accordingly, Employer's motion for reconsideration is hereby **DENIED**.

SO ORDERED.

Dierdra M. Howard
Administrative Law Judge
Washington, D.C.