



IN THE MATTER OF:

LAWN GROOMERS, INC.,

ARB CASE NO. 2025-0046

PETITIONER,

ALJ CASE NO. 2025-TLN-00033

ALJ DAN C. PANAGIOTIS

DATE: May 14, 2025

**Before JOHNSON, Chief Administrative Appeals Judge, and KAPLAN,
Administrative Appeals Judge**

DECISION AND ORDER

PER CURIAM:

On March 21, 2025, Petitioner Lawn Groomers, Inc., filed a Petition for Review with the Administrative Review Board (ARB or Board) of a February 19, 2025 Decision and Order by the Board of Alien Labor Certification Appeals (BALCA). The Board does not have jurisdiction to hear and decide appeals of BALCA decisions. Therefore, we dismiss this case.

BACKGROUND

Employers who want to temporarily employ foreign workers for non-agricultural work under the H-2B program may apply to the Department of Labor's Employment and Training Administration, Office of Foreign Labor Certification (OFLC).¹ An OFLC Certifying Officer (CO) may certify or deny the application

¹ 20 C.F.R. §§ 655.15 to .19.

based on regulatory criteria.² If denied, the employer may request administrative review before BALCA.³

Petitioner Lawn Groomers applied to OFLC to hire foreign temporary workers under the H-2B program.⁴ The CO denied Petitioner's application, and Petitioner appealed to BALCA.⁵ On February 15, 2025, BALCA affirmed the CO's denial of Petitioner's application.⁶ Petitioner then filed an appeal of the BALCA decision with the ARB on March 21, 2025.

On March 27, 2025, the Board issued an Order to Show Cause directing Petitioner to explain why the Board has jurisdiction in this matter. Petitioner responded on April 10, 2025. On April 18, 2025, the Board issued an Order permitting OFLC or the Associate Solicitor for Employment and Training Legal Services to file a brief responding to Petitioner's response and stating their position on the Board's jurisdiction to hear this case. OFLC responded on May 2, 2025.

DISCUSSION

The ARB's jurisdiction is limited to the statutes explicitly delegated to it by the Secretary of Labor.⁷ The Secretary has delegated the authority to review a CO's denial of an H-2B application only to BALCA; the Secretary has not delegated any power or authority to the ARB to have any role in that process or to review BALCA decisions.⁸

² *Id.* §§ 655.50 to .54.

³ *Id.* §§ 655.53, .61. BALCA is a permanent Board chaired by the Department of Labor Chief Administrative Law Judge (ALJ) and consisting of ALJs designated by the Chief ALJ. *Id.* § 655.5.

⁴ *Lawn Groomers, Inc.*, BALCA No. 2025-TLN-00033, slip op. at 2 (BALCA Feb. 19, 2025).

⁵ *Id.* at 1-2.

⁶ *Id.* at 13.

⁷ Secretary's Order No. 01-2020 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 85 Fed. Reg. 13,186 (Mar. 6, 2020); *Adm'r, Wage & Hour Div., USDOL v. Five M's, LLC*, ARB No. 2019-0014, ALJ Nos. 2015-FLS-00010, -00011, slip op. at 14 (ARB Nov. 13, 2020) ("The Board was created by delegation from the Secretary of Labor and, therefore, has a limited and defined jurisdiction and scope of authority.").

⁸ *See* Secretary's Order No. 01-2020, 85 Fed. Reg. at 13,186-87; Rules Concerning Discretionary Review by the Secretary, 85 Fed. Reg. 30,608, 30,608-09 (May 20, 2020)

In its Petition for Review, Petitioner cited 29 C.F.R. § 503.51(a) as the basis for the ARB’s jurisdiction in this case.⁹ Petitioner also stated that this is an appeal from an ALJ’s decision “finding regulatory violations by an employer of H-2B workers” and that “[c]ivil monetary penalties were assessed for each violation found.”¹⁰

The regulation cited by Petitioner, 29 C.F.R. § 503.51(a), concerns back-end enforcement proceedings by the Department’s Wage and Hour Division (WHD) for violations of H-2B program requirements. If WHD determines that an employer has violated a program requirement, such as paying the required wage, it may institute administrative proceedings to collect unpaid wages, impose civil money penalties, assess other make whole relief, and impose debarment.¹¹ Those back-end enforcement proceedings, in contrast to the front-end certification proceedings at issue here, are heard by an ALJ¹² and may be appealed to the ARB.¹³

Despite Petitioner’s statement that this case involves “violations” of the H-2B program and the assessment of CMPs, this is not a WHD enforcement case over which the ARB would have jurisdiction under 29 C.F.R. § 503.51. Petitioner appeals the denial of its H-2B application, and there is no indication anywhere, besides Petitioner’s unsupported preliminary statement in its Petition, that it was ever charged with violating the H-2B program requirements or assessed CMPs or other administrative remedies by WHD.

In Petitioner’s response to the Board’s Order to Show Cause, Petitioner cited Paragraphs 5(b)(27) and (28) of the Secretary’s delegation of authority to the ARB,

(stating that while the ARB “has authority to hear appeals from the decisions of the Department’s Office of Administrative Law Judges (OALJ) about certain immigration, child labor, employment discrimination, federal construction/service contracts, and other issues,” BALCA “has authority over appeals from the decisions of the Employment and Training Administration’s adjudication of foreign labor certification applications.”); 20 C.F.R. § 655.61 (“[E]mployers may request an administrative review before the BALCA of a determination by the CO.”).

⁹ Petition for Review at 5.

¹⁰ *Id.* at 2.

¹¹ 29 C.F.R. §§ 503.7, .15, .16, .19, .20.

¹² *Id.* § 503.43.

¹³ *Id.* § 503.51.

which delegate to the ARB the authority to hear ALJ decisions arising under 8 U.S.C. § 1184(c)(14); 8 U.S.C. § 1188(b)(2); 20 C.F.R. Part 655, Subpart A; and 29 C.F.R. Part 503, Subpart C.¹⁴ Again, however, those provisions give the ARB the ability to hear and decide appeals in back-end enforcement proceedings involving alleged H-2B violations, in contrast to the front-end certification decisions appealable to BALCA here.¹⁵

Because the ARB does not have jurisdiction in this case, we **DISMISS** this appeal.

SO ORDERED.

RANDEL K. JOHNSON
Chief Administrative Appeals Judge

ELLIOT M. KAPLAN
Administrative Appeals Judge

¹⁴ Employer's Response to the Administrative Review Board's Order to Show Cause at 2-3 (citing Secretary's Order 01-2020, 85 Fed. Reg. at 13,187).

¹⁵ 8 U.S.C. § 1184(c)(14) (allowing the Secretary to impose administrative remedies and debarment if an employer violates H-2B program requirements); 8 U.S.C. § 1188(b)(2) (providing that the Secretary may not approve an H-2A application if, among other circumstances, the Secretary previously determined that the employer violated H-2B program requirements); 20 C.F.R. § 655.73 (defining the administrative procedures, including appeals to the ARB, for cases in which OFLC seeks to debar an employer for H-2B violations); 29 C.F.R. Part 503, Subpart C (defining the administrative procedures, including appeals to the ARB, for cases in which WHD seeks to assess administrative remedies or to debar an employer for H-2B violations). We recognize that in addition to the administrative procedures related to back-end enforcement for program violations referenced above, 29 C.F.R. Part 655, Subpart A, also includes the administrative procedures for seeking front-end certification of an H-2B application including, as appropriate, appeals to BALCA. However, it is clear from the language of Subpart A itself and the context of the Secretary's delegation to the ARB that the ALJ's inclusion of Subpart A in the ARB's delegation only grants the power to the ARB to hear and decide back-end enforcement appeals under 29 C.F.R. § 655.73. *See* 85 Fed. Reg. at 30,608-09; *compare* 20 C.F.R. § 655.61 (making front-end certification decisions appealable to BALCA, and giving the ARB no role in that process) *with* 20 C.F.R. § 655.73 (making back-end debarment actions for program violations appealable to the ARB, and giving BALCA no role in that process).