

U.S. Department of Labor

Administrative Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001



IN THE MATTER OF:

McCURRY CONTRACTORS, INC.,

ARB CASE NO. 2026-0014

PETITIONER,

ALJ CASE NO. 2025-TLN-00196

ALJ JONATHAN C. CALIANOS

DATE: January 26, 2026

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

ORDER OF DISMISSAL

On December 18, 2025, Petitioner McCurry Contractors, Inc., filed a Petition for Review with the Administrative Review Board (Board) of a December 11, 2025 Decision and Order Affirming Denial of Certification (D. & O.) 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 based on regulatory criteria.² If denied, the employer may request administrative review before BALCA.³

¹ 20 C.F.R. §§ 655.15- 655.19.

² *Id.* §§ 655.50-655.54.

³ *Id.* §§ 655.53, 655.61. 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.

On July 31, 2025, Petitioner filed an application under the H-2B labor certification program.⁴ On September 22, 2025, a CO issued a Final Determination denying certification.⁵ On October 1, 2025, Petitioner requested administrative review with BALCA.⁶ On December 11, 2025, BALCA issued the D. & O., which affirmed denial of the certification. Petitioner then filed an appeal of the D. & O. with the Board on December 18, 2025.

On January 6, 2026, the Board issued an Order to Show Cause directing Petitioner to explain why the Board has jurisdiction in this matter. Petitioner responded the same day with a Brief in Response to Order to Show Cause (Response).

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 The Board confirmed its lack of jurisdiction over these cases recently in *Lawn Groomers*, ARB No. 2025-0046, ALJ No. 2025-TLN-00033 (ARB May 14, 2025).

⁴ D. & O. at 2.

⁵ *Id.* at 3.

⁶ *Id.*

⁷ Secretary's Order No. 01-2020 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 85 Fed. Reg. 13186 (Mar. 6, 2020); *Adm'r, Wage & Hour Div., U.S. Dep't of Lab. 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 13186-87; Rules Concerning Discretionary Review by the Secretary, 85 Fed. Reg. 30608, 30608-09 (May 20, 2020) (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(a) ("[E]mployers may request an administrative review before the BALCA of a determination by the CO.").

In its Petition, Petitioner included a jurisdictional statement stating that the Board is authorized to review the underlying BALCA order pursuant to 20 C.F.R. § 655.61(i).⁹ However, the cited regulation, 20 C.F.R. § 655.61, does not include a paragraph (i), and the regulation makes no reference to the Board.¹⁰ In its “Standard of Review,” Petitioner also stated that “[t]he ARB reviews BALCA decisions de novo on legal questions and for substantial evidence on factual findings,” citing 29 C.F.R. § 26.14 and *Sec’y U.S. Dep’t of Labor v. Beverly Healthcare-Hillview*, ARB No. 13-088 (Dec. 23, 2016).¹¹ The cited regulation¹² and case¹³ do not appear to exist, either.¹⁴ Finally, Petitioner cited Secretary’s Order 01-2020, but the Board ruled in *Lawn Groomers* that the Secretary’s Order does not give the Board jurisdiction in BALCA appeals.¹⁵

In its Response, Petitioner now appears to concede that the ARB does not have jurisdiction over its appeal. Instead, Petitioner requests that the Board refer this matter to the Secretary of Labor, who Petitioner believes has the discretion to

⁹ Petition at 2.

¹⁰ The regulation contains only paragraphs (a) through (f).

¹¹ *Id.* at 4.

¹² Part 26 of Title 29 of the Code of Federal Regulations sets for the Board’s Rules of Practice and Procedure. That Part includes only four sections—29 C.F.R. §§ 26.1 to 26.4—and contain no provisions regarding the Board’s jurisdiction or BALCA.

¹³ The case number indicated in the case citation belongs to a case arising under the Davis-Bacon Act, *In re Strickland*, regarding conformance requests. There is also a case titled *Sec’y of Lab. v. Beverly Healthcare-Hillview* from the Third Circuit Court of Appeals (541 F.3d 193), decided in 2008, involving citations by the Occupational Safety and Health Administration against a healthcare employer for failing to compensate employees for travel expenses. Neither case appears to have any relevance to the issues here or involve BALCA.

¹⁴ In response to our Order to Show Cause, Petitioner acknowledged that 29 C.F.R. § 655.61 does not include a paragraph (i) and that the cited case “do[es] not involve BALCA appeals in the H-2B context.” Response at 1-2.

¹⁵ *Lawn Groomers, Inc.*, ARB No. 2025-0046, slip op. at 2 (“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.”).

review the underlying BALCA decision.¹⁶ Specifically, Petitioner states that “Section 6 of [Secretary’s Order 01-2020] allows the Secretary to ‘assume jurisdiction over any case before the ARB or BALCA’ at his discretion.”¹⁷ Petitioner also states that “[t]his [discretionary review] mechanism was extended to H-2B BALCA cases through subsequent rulemaking.”¹⁸

Secretary’s Order 01-2020 does not refer to BALCA or provide for discretionary review of BALCA decisions, and the quote provided in the Response does not appear in the Secretary’s Order. It also appears that Petitioner is incorrect that discretionary review was extended to H-2B BALCA cases through rulemaking. After enacting new regulations in 2020 that gave the Secretary the power to undertake discretionary review of BALCA decisions in the H-2A and other contexts,¹⁹ the Department proposed rules in 2021 that would have extended the same discretionary review procedures to BALCA decisions in the H-2B context as well.²⁰ However, the Department withdrew the proposed rules without implementing them.²¹ In any event, even if there is a discretionary review

¹⁶ Response at 2 (stating “the Secretary of Labor has retained discretionary authority to review BALCA decisions under Secretary’s Order 01-2020, and DOL regulations and practices support construing Petitioner’s filing as a request for such review.”).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Discretionary Review by the Secretary, 85 Fed. Reg. 13024 (Mar. 6, 2020) (proposing a Direct Final Rule for discretionary review); Discretionary Review by the Secretary, 85 Fed. Reg. 13086 (Mar. 6, 2020) (providing a Notice of Proposed Rulemaking to run simultaneously with the Direct Final Rule for discretionary review); Rules Concerning Discretionary Review by the Secretary, 85 Fed. Reg. 30608 (May 20, 2020) (issuing a Final Rule for discretionary review); *see also* 29 C.F.R. § 18.95. The 2020 rulemaking stated explicitly that the Department of Labor and the Department of Homeland Security decided they would subsequently issue a separate rule for discretionary review of H-2B cases. Discretionary Review by the Secretary, 85 Fed. Reg. at 13026.

²⁰ Discretionary Review by the Secretary of Labor, 86 Fed. Reg. 1 (Jan. 4, 2021) (proposing a Direct Final Rule for discretionary review in H-2B cases); Discretionary Review by the Secretary of Labor, 86 Fed. Reg. 29 (Jan. 4, 2021) (providing a Notice of Proposed Rulemaking to run simultaneously with the Direct Final Rule for discretionary review in H-2B cases).

²¹ Discretionary Review by the Secretary of Labor, 86 Fed. Reg. 7927 (Feb. 3, 2021) (withdrawing the Direct Final Rule for discretionary review in H-2B cases).

mechanism for the Secretary in this case, the Board has no role in that mechanism and has no power or authority to direct this matter to the Secretary for review.²²

CONCLUSION

For the foregoing reasons, we **DISMISS** this case.

SO ORDERED.

RANDEL K. JOHNSON
Chief Administrative Appeals Judge

THOMAS H. BURRELL
Administrative Appeals Judge

²² Petitioner similarly asks the Board to dismiss this case “without prejudice” if it determines that “it lacks jurisdiction and declines to refer the matter” to the Secretary, because “Petitioner filed with the ARB in good faith, and equitable tolling should apply to preserve the 60-day limitations period for judicial review.” Response at 4. Again, the Board has no jurisdiction here, has no role in any review mechanism of BALCA cases, and will not opine, directly or indirectly, on whether Petitioner acted in good faith or whether equitable tolling should apply.