



**Issue Date: 22 September 2022**

**BALCA Case No.:** 2022-TLN-00136

**ETA Case No.:** H-400-21233-537324

In the Matter of:

**Trapper Corporation**  
**dba The Lexington at Jackson Hole Hotel & Suites,**  
Employer.

**Certifying Officer:**

Ishel Quintana  
Chicago National Processing Center

**Appearances:**<sup>1</sup>

Tristan Strong  
MAS Labor H2B, LLC  
For the Employer

**Before:**

John P. Sellers, III  
Administrative Law Judge

**DECISION AND ORDER AFFIRMING CERTIFYING OFFICER'S DENIAL OF EXTENSION REQUEST<sup>2</sup>**

This case is before the Board of Alien Labor Certification Appeals ("BALCA") pursuant to a request filed by Trapper Corporation dba The Lexington at Jackson Hole Hotel & Suites ("Employer") to review the Denial of Extension Request issued by the Certifying Officer ("CO") in the above-captioned H-2B temporary labor certification case.<sup>3</sup> The H-2B program permits

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<sup>1</sup> The Office of the Solicitor, U.S. Department of Labor, did not make an appearance on behalf of the Certifying Officer in this case.

<sup>2</sup> This document has been formatted to substantially comply with Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. § 794d), as amended ("Section 508"). Section 508 requires electronic and information technology procured, developed, maintained, and used by Federal departments and agencies to be accessible to and usable by people with disabilities, unless an exception applies.

<sup>3</sup> On April 29, 2015, the Department of Labor (the "Department") and the Department of Homeland Security jointly published an Interim Final Rule ("IFR") amending the standards and procedures that

employers to hire foreign workers to perform temporary, non-agricultural work within the United States (“U.S.”) on a one-time, seasonal, peakload, or intermittent basis.<sup>4</sup> Employers who seek to hire foreign workers under this program must apply for and receive labor certification from the U.S. Department of Labor (“Department”). 8 C.F.R. § 214.2(h)(6)(iii). A CO in the Office of Foreign Labor Certification of the Employment and Training Administration reviews applications for temporary labor certification.

## STATEMENT OF THE CASE

The Employer is a hotel/lodge located in Jackson, Wyoming. On August 21, 2021, the Employer filed with the CO an Application for Temporary Employment Certification, Form ETA-9142B (“Application”), and supporting documentation. (AF<sup>5</sup> 36-71.) The Employer requested certification for twenty-three breakfast and room attendants<sup>6</sup> from November 19, 2021, until September 18, 2022, based on an alleged peak-load need for workers. (AF 37.)

On September 15, 2021, the CO issued a Notice of Certification, informing the Employer that its application for temporary labor certification for the H-2B program was certified. (*Id.* at 23-27.) Specifically, the Department granted certification for twenty-three breakfast and room attendants, maids and housekeeping cleaners for the period of November 19, 2021, until September 18, 2022. (*Id.* at 23.)

On August 8, 2022, the Employer filed a Request to Extend Labor Certification with the Chicago National Processing Center. (*Id.* at 18-22.) The Employer asserted that it needed an extension of the labor certification until October 20, 2022, as increased tourism levels to Yellowstone National Park and the unforeseen outbreak of monkeypox in the United States led to increased and prolonged cleaning needs and prevented the staff from performing an annual “deep clean” within the previously certified time period. (*Id.* at 19-20.)

On August 18, 2022, the CO issued a Denial of Extension Request. (*Id.* at 15-17.) The CO stated that the:

[E]mployer’s explanation of an increase in business volume indicates that the employer should file a new application as its next course of action, not request an extension for a period of need and number of workers that had already been

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govern the H-2B temporary labor certification program. 80 Fed. Reg. 24042 (Apr. 29, 2015). In this Decision and Order, all citations to 20 C.F.R. Part 655 pertain to the IFR.

<sup>4</sup> See 8 U.S.C. § 1101(a)(15)(H)(ii)(b); 8 C.F.R. § 214.2(h)(6); 20 C.F.R. § 655.6(b). The definition of temporary need is governed by 8 C.F.R. § 214.2(h)(6)(ii)(B). Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Division H, Title I, § 113 (2015). This definition has remained in place through subsequent appropriations legislation, including the current legislation. See Consolidated Appropriations Act, 2022, Pub. L. No. 117-103, Division H, Title I, § 111 (2022).

<sup>5</sup> “AF” refers to the Appeal File.

<sup>6</sup> The SOC (O\*Net/OES) occupation code is 37-2012.00 and occupation title is “maids and housekeeping cleaners.” (AF 37.)

certified. Regarding the employer's statement concerning the impact of monkeypox on the business, no supporting documentation was provided showing the specific impact on the employer's individual business.

(*Id.* at 17.)

On August 30, 2022, the Employer requested administrative review of the CO's Denial of Extension Request. (AF 1-12.) BALCA assigned this case to me on September 13, 2022. The same day, I received the Appeal File. On September 14, 2022, I issued a Notice of Assignment and Order Setting Briefing Schedule permitting the Employer and counsel for the Certifying Officer (the "Solicitor") to file briefs within seven business days of receiving the Appeal File. 20 C.F.R. § 655.61(c). Neither the Employer nor the Solicitor filed a brief.

## **DISCUSSION AND APPLICABLE LAW**

BALCA's scope of review in H-2B cases is limited. BALCA may only consider the Appeal File prepared by the CO, the legal briefs submitted by the parties, and the Employer's request for administrative review, which may only contain legal arguments and evidence that the Employer submitted to the CO before the date of the CO's determination. 20 C.F.R. § 655.61. After considering the evidence of record, BALCA must: (1) affirm the CO's determination; (2) reverse or modify the CO's determination; or (3) remand the case to the CO for further action. 20 C.F.R. § 655.61(e).

Pursuant to 20 C.F.R. § 655.60, an employer may file for an extension of their temporary labor certification under the following circumstances:

A request for extension must be related to weather conditions or other factors beyond the control of the employer (which may include unforeseeable changes in market conditions), and must be supported in writing, with documentation showing why the extension is needed and that the need could not have been reasonably foreseen by the employer.

20 C.F.R. § 655.60.

After reviewing the record, I find no error in the CO's determination that the Employer failed to provide documentation showing the impact that higher levels of travel to Yellowstone National Park, as well as the spread of monkeypox, had on its business. In its application, which the CO certified, the Employer alleged a peak-load need for laborers from November 19, 2021, until September 18, 2022. (AF 36-71.) In its statement of temporary need, the Employer explained that due to the hotels proximity to Yellowstone National Park, it experienced increased occupancy rates during peak tourism season, which begins in "the spring" and ends before October. (*Id.* at 62.) The Employer stated that visitations to national parks had been increasing and that it anticipated an increase in demand for rooms and reservations into the 2022 season. (*Id.* at 63.) The Employer noted that it was requesting workers beginning in mid-

November to allow “sufficient time for deep cleaning our rooms and common areas prior to the time when occupancy traditionally begins to ramp up for the peak travel season.” (*Id.*)

To support its request for an extension, the Employer submitted a printout demonstrating increased levels of tourism to Yellowstone National Park from January to May 2022. (*Id.* at 21.) As noted by the CO, this documentation is insufficient to show why an extension was needed. While the Employer accurately predicted that tourism levels in 2022 would be greater than levels in previous years, increased tourism to a national park does not necessarily correlate to an increase in demand for rooms at the Employer’s individual business. There is also no evidence in the record to demonstrate that the high levels of tourism will extend past the end of the peak season described in the Employer’s application. Further, there is no evidence to show that current tourism levels have led to an increase in reservations at the Employer’s hotel for October 2022 when compared to reservations in October for prior years. There is also no documentation in the record to demonstrate the impact that the monkeypox virus has had on the current staffing levels and cleaning schedule. The Employer indicated in its application that beginning its deep cleaning in mid-November was sufficient time to complete the process before occupancy increased in “the spring.” There is no evidence to show why that has changed, or to demonstrate that workers are now needed in October for the deep-cleaning process. Thus, I find the Employer has failed to provide sufficient documentation to support its asserted need for an extension of the previously certified time period.

Accordingly, I do not find that the CO’s decision to deny the extension request to be arbitrary or capricious, since the Employer did not provide sufficient documentation to demonstrate that an extension was necessary due to reasons beyond the control of the Employer, which could not be reasonably foreseen. Therefore, I find that the Denial issued by the CO was proper.

**ORDER**

I hereby **AFFIRM** the Certifying Officer’s Denial of Extension Request.

For the Board:

JOHN P. SELLERS, III  
ADMINISTRATIVE LAW JUDGE