



**U.S. DEPARTMENT OF LABOR  
OFFICE OF ADMINISTRATIVE LAW JUDGES**

Date: 08-11-78

**JOSEPH AND BARBARA SLOVAK:**

**CASE NO. 78-TLC-136**

DECISION BASED ON THE REQUEST OF JOSEPH  
AND BARBARA SLOVAK (EMPLOYER) FOR AN EXPEDITED  
ADMINISTRATIVE-JUDICIAL REVIEW, PURSUANT TO  
20 CFR § 655.212, OF A DENIAL OF AN APPLICATION  
FOR LABOR CERTIFICATION.

THE EMPLOYER STATED THAT CONTINUING EFFORTS TO HIRE UNITED STATES (U.S.) AGRICULTURAL WORKERS FOR THE PERIOD FROM MAY 20 THROUGH NOVEMBER 10, 1978, WERE INITIATED IN FEBRUARY 1978, BUT FAILED TO PRODUCE THE NEEDED NUMBER OF EMPLOYEES. THEREFORE, ON JULY 19, 1978, THE EMPLOYER FILED AN APPLICATION FOR THE TEMPORARY LABOR CERTIFICATION OF ELEVEN ALIEN WORKERS TO BE EMPLOYED AS SOON AS POSSIBLE THROUGH DECEMBER 1, 1978.

ON JULY 31, 1978, JESS C. RAMAKER, THE ACTING REGIONAL ADMINISTRATOR FOR THE EMPLOYMENT AND TRAINING ADMINISTRATION, U.S. DEPARTMENT OF LABOR I NEW YORK, NEW YORK, WIRED THE EMPLOYER THAT CERTIFICATION WAS DENIED ON THE GROUNDS THAT THERE WAS INSUFFICIENT TIME TO ADEQUATELY TEST THE AVAILABILITY OF U.S. WORKERS AS REQUIRED BY THE REGULATIONS, 20 CFR § 655.201.

THE APPLICABLE REGULATIONS ARE ISSUED BY THE SECRETARY OF LABOR IN ACCORDANCE WITH THE AUTHORITY UNDER THE IMMIGRATION AND NATIONALITY ACT AND REGULATIONS OF THE IMMIGRATION AND NATIONALITY SERVICE. 8 U.S.C. § 1101 ET SEQ., 8 CFR § 214.2(H)(3)(I), 20 CFR § 655 ET SEQ.

SECTION 655.201(C) OF THE SECRETARY'S REGULATIONS PROVIDE, IN EFFECT, THAT TEMPORARY LABOR CERTIFICATION APPLICATIONS MUST BE FILED IN SUFFICIENT TIME TO ALLOW RECRUITMENT OF U.S. WORKERS FOR 60 CALENDAR DAYS PRIOR TO THE ESTIMATED DATE OF NEED. IN THIS CASE, THE

FILING DATE, JULY 19, 1978, AND THE DATE OF NEED ARE THE SAME AND DO NOT SATISFY THE SPECIFIED TIME REQUIREMENT.

THE EMPLOYER URGES THAT THE CROPS ARE READY FOR HARVESTING, IT IS SHORT OF HELP AND SINCE EFFORTS TO GET HELP WHICH BEGAN IN FEBRUARY, 1978 HAVE BEEN UNSUCCESSFUL, THE TIME-PERIOD SHOULD BE WAIVED IN ACCORDANCE WITH SECTION 655.201(E) OF THE REGULATIONS BECAUSE OF THE EMERGENCY.

THAT SECTION PROVIDES THAT IN EMERGENCY SITUATIONS THE REGIONAL ADMINISTRATOR (RA) MAY WAIVE THE TIME PERIOD ON BEHALF OF EMPLOYERS WHO HAVE NOT MADE USE OF TEMPORARY ALIEN WORKERS FOR THE PRIOR YEAR'S HARVEST OR FOR OTHER GOOD CAUSE PROVIDED THE RA HAS SUFFICIENT LABOR MARKET INFORMATION TO MAKE THE REQUIRED LABOR CERTIFICATION DETERMINATIONS.

THE REQUEST FOR WAIVER WAS MADE INITIALLY IN A COVERING LETTER DATED JULY 19, 1978, SUBMITTED BY THE EMPLOYER WITH HIS APPLICATION FOR TEMPORARY LABOR CERTIFICATION. IT IS PART OF THE RECORD IN THIS CASE AND MUST BE PRESUMED TO HAVE BEEN CONSIDERED BY THE RA.

SINCE THE REGULATION PROVIDES THAT THE RA MAY WAIVE THE SPECIFIED TIME PERIOD, HIS AUTHORITY TO DO SO RESTS IN HIS DISCRETION AND IS NOT MANDATORY. THEREFORE, IT IS REASONABLE TO CONCLUDE THAT THE RA REFUSED TO WAIVE AND DENIED THE APPLICATION BECAUSE .ALL OF THE REQUIREMENTS AND CONDITIONS FOR FILING THE APPLICATION AND FOR GRANTING A WAIVER WERE NOT SATISFIED AS REQUIRED BY LAW.

UNDER THE CIRCUMSTANCES, THE RA DENIAL OF THE APPLICATION FOR TEMPORARY LABOR CERTIFICATION IS HEREBY AFFIRMED.

AARON SILVERMAN  
HEARING OFFICER