



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

DATE PREPARED 12-07-78

RE: PHIL ECHEVERRIA SHEEP CO., INC. &
WESTERN RANGE ASSOC. CASE NO. 79-TLC-4

THIS MATTER IS ON APPEAL BY THE ABOVE NAMED EMPLOYERS OF THE DENIAL OF TEMPORARY LABOR CERTIFICATION BY REGIONAL ADMINISTRATOR (RA), DATED NOVEMBER 28, 1978.

APPEAL AND CASE FILE RECEIVED IN THIS OFFICE ON DECEMBER 6, 1978.

EMPLOYERS FILED A TEMPORARY LABOR CERTIFICATION APPLICATION FOR ONE SHEEPHERDER. CERTIFICATION WAS DENIED BASED ON THE RA'S FINDING THAT "THE APPLICATION DOES NOT SHOW THAT WORKERS ARE PROVIDED WITH HOUSING THAT MEETS EITHER THE FULL SET OF DEPARTMENT OF LABOR, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION STANDARDS SET FOR AT 29 CFR 1910.142 OR THE FULL SET OF STANDARDS OF 20 CFR 620 IF APPLICABLE. REGULATIONS AT 20 CFR 655.202(B)(1) REQUIRE THE JOB OFFER TO SHOW THAT SUCH HOUSING IS FURNISHED TO WORKER. IF MOBILE RANGE HOUSING IS BEING FURNISHED TO SHEEPHERDERS, THAT HOUSING MUST MEET THE STANDARDS OF 20 CFR 620 AS MODIFIED BY THE SHEEPHERDERS PROGRAM GUIDELINES."

WESTERN RANGE ASSOCIATION IN ITS REQUEST FOR ADMINISTRATIVE JUDICIAL REVIEW ASSERTS THAT THE FORM (ES 338) WHICH PROVIDES PERTINENT INFORMATION AS TO HOUSING IS INCORRECT AND MISLEADING.

ADMINISTRATIVE - JUDICIAL REVIEW IS CONFIRMED TO REVIEW OF THE RECORD FOR LEGAL SUFFICIENCY. 20 CFR 655.212. THE RECORD REFLECTS THAT THE EMPLOYERS WERE WELL AWARE OF THE HOUSING REQUIREMENTS OF THE REGULATIONS AS INDICATED BY ITS REQUEST FOR WAIVER FOR WINTER-HOUSING SET FORTH IN THE APPLICATION. FURTHER, THE ASSOCIATION HAS BEEN CONCERNED WITH THE HOUSING PROVISIONS IN OTHER CASES WHEREIN IT REQUESTED REVIEW (MOST RECENT CASE BEING AJA SHEEP COMPANY WESTERN RANGE ASSOCIATION. (CASE NO. 79-TLC-2). THE EMPLOYERS DO NOT DENY THAT THEIR APPLICATION IS DEFICIENT REGARDING

THE HOUSING PROVISIONS WHICH IS THE GROUND FOR DENIAL OF CERTIFICATION.

THE RECORD SUPPORTS THE RA'S FINDING THAT THE RECORD IS DEFICIENT AND DENIAL OF CERTIFICATION IS PROPER.

THIS IS THE FINAL DECISION OF THE DEPARTMENT OF LABOR IN THIS MATTER. FURTHER REVIEW MAY BE OBTAINED BY FILING A PETITION WITH THE DISTRICT DIRECTOR, IMMIGRATION AND NATURALIZATION SERVICE IN THE EMPLOYER'S GEOGRAPHICAL AREA PURSUANT TO 8 C.F.R. 214.2(h)(3)(i).

THIS DECISION IS BEING TRANSMITTED TO C. LEE JOHNSON,; THE REGIONAL ADMINISTRATOR, THE ADMINISTRATOR OF THE U.S.; EMPLOYMENT SERVICE, THE ASSOCIATE SOLICITOR FOR EMPLOYMENT AND TRAINING AND THE DIRECTOR OF' IMMIGRATION AND NATURALIZATION SERVICE.

THOMAS G. EGAN
HEARING OFFICER
U.S. DEPARTMENT OF LABOR