



**UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES**

DATE PREPARED: 25 JAN 1983

RE: DALE AAGARD, CASE NO. 83-TLC-2
SEBASTIAN LARRALDE, CASE NO. 83-TLC-3

THIS IS A DECISION IN RESPONSE TO TWO SEPARATE REQUESTS, ONE BY EMPLOYER DALE AAGARD AND ONE BY EMPLOYER SEBASTIAN LARRALDE, FOR EXPEDITED ADMINISTRATIVE JUDICIAL REVIEW, PURSUANT TO 20 C.F.R. §656.212 OF A DENIAL OF THEIR APPLICATION FOR TEMPORARY LABOR CERTIFICATION. THE SAME ATTORNEY APPEARS FOR BOTH EMPLOYERS AND, SINCE BOTH CASES INVOLVE REQUESTS FOR SHEEPSHEARERS IN WORLAND, WYOMING, THEY WILL BE CONSOLIDATED AS REQUESTED BY THE ATTORNEY.

DALE AAGARD FILED AN APPLICATION FOR CERTIFICATION ON NOVEMBER 4, 1982, FOR TWENTY-FIVE SHEEPSHEARERS, THE DATE OF NEED WAS STATED AS FEBRUARY 7, 1983.

ON JANUARY 12, 1983, THE REGIONAL ADMINISTRATOR (RA) DENIED CERTIFICATION. THIS DETERMINATION WAS BASED ON THE FACT THAT U.S. WORKERS WERE FOUND AVAILABLE IN THE OCCUPATION FOR WHICH CERTIFICATION WAS REQUESTED. THE RA IDENTIFIED THIRTY WORKERS FROM THE BRIGHTON JOB SERVICE AND THIRTEEN WORKERS FROM THE DEL RIO, TEXAS SERVICE AS WELL AS THREE ADDITIONAL WORKERS FROM BRIGHTON, COLORADO.

THE SECOND EMPLOYER, SEBASTIAN LARRALDE, FILED AN APPLICATION FOR TEMPORARY LABOR CERTIFICATION DATED SEPTEMBER 23, 1982, FOR TWENTY ALIEN WORKERS TO FILL POSITIONS AS SHEEPSHEARERS.

ON JANUARY 7, 1983, THE REGIONAL ADMINISTRATOR (RA) DENIED CERTIFICATION. THIS DETERMINATION WAS BASED ON THE FACT THAT U.S. WORKERS ARE AVAILABLE IN THE OCCUPATION FOR WHICH CERTIFICATION WAS REQUESTED. THE EMPLOYER WAS NOTIFIED JANUARY 6, 1983, BY THE COLORADO JOB SERVICE THAT THEY EXPECTED TO HAVE TWENTY WORKERS AVAILABLE FOR INTERVIEW IN THE BRIGHTON LOCAL OFFICE ON JANUARY 10, THE DATE SPECIFIED AS THE DATE OF NEED. EMPLOYER SEBASTIAN LARRALDE

DECLINED TO TRAVEL TO BRIGHTON FOR THE INTERVIEWS AND STATED HE WANTED TO INTERVIEW THEM INDIVIDUALLY AT THEIR HOMES BY TELEPHONE. EVIDENCE ALSO EXISTS THAT THE DALLAS REGIONAL OFFICE CALLED TO ADVISE THE WORLAND, WYOMING JOB SERVICE THAT TWELVE EXPERIENCED SHEARERS WERE AVAILABLE FROM THAT REGION. ADDITIONALLY, THE DENIAL OF JANUARY 7, 1983, LISTED THE NAMES OF 30 SHEEPSHEARERS SUBMITTED BY THE BRIGHTON, COLORADO JOB SERVICE TO THE WORLAND, WYOMING SERVICE ON BEHALF OF THE EMPLOYER SEBASTIAN LARRALDE.

THE EMPLOYERS APPEALED THE RA'S DECISION DENYING CERTIFICATION BY TELEGRAM OF JANUARY 14, 1983. IN THEIR APPEAL, THE EMPLOYERS DISPUTE THAT QUALIFIED PERSONS ARE AVAILABLE TO FILL THESE POSITIONS. HOWEVER, EVIDENCE OF RECORD INDICATES THAT FORTY-SIX POTENTIAL APPLICANTS HAVE BEEN IDENTIFIED AND WERE AVAILABLE TO BE INTERVIEWED. IN THE CASE OF SEBASTIAN LARRALDE, THE EMPLOYER REFUSED TO DO SO.

UNDER 20 C.F.R. §655.206(a), "AVAILABLE" MEANS THOSE WHOM THE RA DETERMINES ARE VERY LIKELY TO SIGN A WORK CONTRACT WITH THE EMPLOYER AS WELL AS ANY U.S. WORK WHO HAS APPLIED TO THE EMPLOYER OR ON WHOSE BEHALF AN APPLICATION HAS BEEN MADE, BUT WHO WAS REJECTED BY THE EMPLOYER FOR OTHER THAN LAWFUL JOB-RELATED REASONS. IN THE CASE OF SEBASTIAN LARRALDE, HIS REFUSAL TO INTERVIEW 1 IS A CONSTRUCTIVE REJECTION; HE GAVE NO REASON FOR THIS REFUSAL. IN THE CASE OF DALE AAGARD, THE RA HAS SHOWN THAT U.S. WORKERS ARE AVAILABLE IN THE OCCUPATION FOR WHICH CERTIFICATION WAS REQUESTED.

20 C.F.R. §655.212(a) AUTHORIZES A HEARING OFFICER, IN ADMINISTRATIVE JUDICIAL REVIEW, TO CONSIDER ONLY THE LEGAL SUFFICIENCY OF THE RECORD UPON WHICH THE DENIAL OF LABOR CERTIFICATION WAS BASED. PARAGRAPH (b) OF THAT SECTION REQUIRES THE HEARING OFFICER TO RENDER HIS DECISION IN FIVE DAYS. THE RECORD IS LEGALLY SUFFICIENT FOR A FINDING THAT THE EMPLOYERS FAILED TO DEMONSTRATE THAT A SHORTAGE OF U.S. WORKERS EXISTS TO FILL POSITIONS AS SHEEPSHEARERS AS MANDATED BY 20 C.F.R. §655.200(a) and §655.206(a). THEREFORE, IN ACCORDANCE WITH 20 C.F.R. §655.204(c), THE RA WAS CORRECT IN DENYING LABOR CERTIFICATION.

THIS IS THE FINAL DECISION OF THE DEPARTMENT OF LABOR ON THIS MATTER. FURTHER REVIEW MAY BE OBTAINED BY FILING A PETITION WITH THE DISTRICT DIRECTOR, IMMIGRATION AND NATURALIZATION SERVICE IN YOUR GEOGRAPHICAL AREA PURSUANT TO 8 C.F.R. 214 2(h)(3)(i). THIS DECISION IS BEING TRANSMITTED TO LUIS SEPULVEDA, 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.

ROY P. SMITH
Administrative Law Judge

RPS/KK/gaf