



MOUNT LEVELS ORCHARDS
AND FARMS

Case No. 83-TLC-9

DECISION AND ORDER

This is a decision in response to a request by employer Mount Levels Orchards and Farms of Martinsburg, West Virginia, for expedited administrative-judicial review under 20 C.F.R. §§655.206(c) and 655.212 of a denial of its application for temporary labor certification.

On June 28, 1983, Mount Levels Orchards and Farms (Mount Levels) filed an application for temporary labor certification for eighty-two apple pickers. On August 11, 1983, a United States Department of Labor, Employment and Training Administration, Regional Administrator (RA) denied certification. The RA denied certification on the basis of a Supplemental Decision and Order of Administrative Law Judge Victor J. Chao in Robert Ackerman v. Mount Levels Orchards and Homer Feller, 82-TAE-3 (July 18, 1983). Judge Chao ordered that Mount Levels be ineligible to apply for temporary labor certifications in 1983 as a sanction for noncompliance with Job Service regulations. The RA correctly found that he was precluded from accepting the application for alien employment certification and that the application must be denied.¹

Mount Levels argues that Judge Chao's decision should not be followed because it has been appealed to the United States District Court for the Northern District of West Virginia. Mount Levels also moved the District Court for a stay of Judge Chao's order.

The regulations governing temporary labor certification applications provide for expedited administrative-judicial review of an RA's determination. 20 C.F.R. §655.212(b) provides that the Hearing Officer shall issue a decision within five working days after receipt of the case file. I received the case file on August 25, 1983, and a decision must be rendered no later than September 1, 1983. To this date, I have not been notified that the United States District Court for the Northern District of West Virginia has issued a stay of 82-TAE-3 and, therefore, that decision making Mount Levels ineligible for temporary labor certifications is still in effect. Accordingly, I affirm the RA's determination.

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

¹ Other reasons for denying Mount Levels' application were mentioned by the RA; however, the legal sufficiency of these other reasons need not be examined given the RA's proper denial on the ground of ineligibility.

Service in your geographical area pursuant to 8 C.F.R. §214(j)(3)(i). This decision is being transmitted to William J. Haltigan, the Regional Administrator, United States Employment Service Administrator, the Associate Solicitor for Employment and Training and the Director of the Immigration and Naturalization Service.

EVERETTE E. THOMAS
Deputy Chief Judge

Dated: 31 AUG 1983
Washington, D.C.

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