



Date: FEB 10 1999
Case No. 88-TLC-5

In the Matter of

SALEH MOHAMMED
Petitioner

v.

U. S. DEPARTMENT OF LABOR,
Respondent

Saleh Mohammed
403 Arabian Street
San Jose, CA 95123
In Pro Se

Don A. Balcer
Regional Administrator
USDOL - ETA
71 Stevenson Street
P. O. Box 3767
San Francisco, CA 94119-3767
For the Department of Labor

Before: EDWARD C. BURCH
Administrative Law Judge

DECISION AND ORDER

This case arises under the Immigration and Nationality Act (hereinafter "the Act"), 8 U.S.C. §1101[a][15], 1184[c], and 1186, and 52 Fed. Reg. 20,496 (to be codified at 20 C.F.R. §655 Subpart B) (1987), pursuant to a request by Petitioner seeking expedited judicial review of a denial by the Employment and Training Administration, U.S. Department of Labor (hereinafter "ETA") of Petitioner's H-2A application for alien employment certification.

Background

On November 27, 1987, Petitioner timely submitted to the ETA an H-2A application for one Kharbuza melon cultivator/harvester to be employed from February 15, 1988 to August 15, 1988. On December 2, after which Petitioner informed the applicant that according to the terms of the offer, work could not be offered until February 15, 1988. As a result, the applicant was

reported back to the EDD office a's "not hired - not qualified," so that Petitioner could continue to receive referrals.

On January 22, 1988, the ETA denied Petitioner's application for certification. The denial letter referred to the conversation between Petitioner and Mr. Gallardo, in which Mr. Gallardo telephoned Petitioner while three applicants were in Mr. Gallardo's office. It was at that time that Petitioner apparently informed Mr. Gallardo that he did not have housing available, could not guarantee eight hours of employment per day, and could not assume transportation costs. According to the letter, Mr. Gallardo was contacted the following day by one of Petitioner's representatives, who explained that Petitioner had misunderstood the requirements that must be met in order for the application to be certified. However, by that time the three applicants had obtained other employment and were no longer available, and no other applicants had been identified for the job order.

The ETA determined that Petitioner's actions had the effect of precluding the employment opportunity for qualified and available U.S. workers for other than lawful job-related reasons, in direct violation of 20 C.F.R. §655.103(c). The ETA informed Petitioner that he could request, within seven days of the date of the denial notice, an expedited administrative review or a de novo administrative hearing before an Administrative Law Judge concerning the denial of the certification application. Petitioner was also informed that along with the request for review or hearing, he could submit any legal arguments which he believed would rebut the basis of this action. On January 28, 1988, Petitioner telegraphically requested an expedited administrative judicial review, but did not submit any additional documentation rebutting the ETA's denial of his application.

Discussion

Pursuant to 52 Fed. Reg. 20,496 (to be codified at 20 C.F.R. §655.90) (1987), one of the purposes underlying the labor certification process is to insure that "there are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor services involved in the petition." This section also states that section 216(c)(3) of the Act specifically directs the Secretary of Labor to grant the certification if

- (i) the employer has complied with the criteria for certification (including criteria for the recruitment of eligible individuals as prescribed by the Secretary), and

[Editor's note: A one page gap follows because the original library document from which this decision was scanned is missing that page.]

misunderstood the requirements placed upon him, is granted a labor certification, when his alleged misunderstanding resulted in the rejection of eligible U.S. workers for the position.

Accordingly, I find that Petitioner failed to comply with the requirements of the labor certification process for the temporary employment of aliens and hereby affirm the ETA's denial of his application for labor certification.

SO ORDERED.

EDWARD C. BURCH
Administrative Law Judge

ECB:csw