



DATE: January 24, 1990

CASE NO: 90-TLC-9

IN THE MATTER OF

RAYDANTE DEVERA

Petitioner

v.

UNITED STATES DEPARTMENT OF  
LABOR

Respondent

J. Bebe Montesclaros  
875 Mahler Road, Suite 200  
Burlingame, CA 94010  
For the Petitioner

Before: NICODEMO DE GREGORIO  
Administrative Law Judge

DECISION AND ORDER

Raydante Devera (Employer) has requested expedited administrative review pursuant to 20 CFR §655.112 of the January 3, 1990 denial by the Certifying Officer (CO) of a temporary labor certification for five farm workers. The case file was received in this Office on January 17, 1990.

Fourteen applicants were referred to Employer. Following interviews conducted by an agent of Employer, all the applicants were rejected on alleged grounds of unavailability for, or lack of interest in, the job. The CO rejected the explanation because the interviewer, contrary to prior admonition, had asked irrelevant and discouraging questions, e.g., concerning length of stay in the United States, possession of work authorizations, past experience on the job although none was required, preference for permanent work over a temporary job, references and resumes, and criminal convictions. The CO found that there are U. S. workers available to fill the job openings.

The CO's findings are supported by the evidence of record. The record in fact shows that because of the manner in which interviews were conducted other available U. S. workers were

not referred to Employer. Moreover, some applicants were contacted by the local office and stated, contrary to Employer's explanation, that they wanted the job.

The denial of temporary labor certification was appropriate and it is hereby affirmed.

NICODEMO DE GREGORIO  
Administrative Law Judge

Washington, D. C.

NDG/bac