



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

DATE PREPARED 8/29/78

RE: NIAGARA ORCHARDS, CASE NO. 78-TLC-140

THIS DECISION BASED ON REQUEST OF KENNETH LIDDELL, MANAGER, NIAGARA ORCHARDS, BURT, NEW YORK, FOR EXPEDITED ADMINISTRATIVE-JUDICIAL REVIEW UNDER 20 C.F.R. SECTION 655.212 FROM AUGUST 22, 1978, DENIAL FOR TEMPORARY LABOR CERTIFICATION FOR 47 (FORTY- SEVEN) WORKERS TO PICK APPLES SEPTEMBER 10, 1978 TO NOVEMBER 15, 1978. THE DENIAL WAS MADE PURSUANT TO 20 C.F.R. 655.206(a)(1) OF THE REGULATIONS STATING THAT A "CLARENCE PEOPLE WITH A CREW OF 50 (FIFTY) IS AVAILABLE." LIDDELL, ASSERTED IN HIS AUGUST 23, 1978 TELEGRAM THAT CLARENCE PEOPLE WAS TO CALL HIM ON AUGUST 2, 1978, AT 9:00 A.M. BUT FAILED TO DO SO. LIDDELL ALSO STATED HE REPORTED PEOPLE'S FAILURE TO CALL TO LOCKPORT EMPLOYMENT, N.Y., AND THAT LIDDELL WAS UNABLE TO CONTACT CLARENCE PEOPLE. LIDDELL'S ASSERTIONS IN FILING APPEAL MAY NOT BE RECEIVED AS EVIDENCE (SECTION 655.2 ALTHOUGH INS MAY CONSIDER FURTHER EVIDENCE NOT BEFORE THE DOL REGIONAL ADMINISTRATOR (RA) (8 C.F.R 214.2(H)(3)(I)). SEE SECTION 655.204(D)(3) (II).

THE MEAGER RECORD IN THIS MATTER REFLECTS AT PAGE 31 OF THE FILE, A HAND NOTATION THAT CLARENCE PEOPLE DID NOT CONTACT NIAGARA ORCHARDS AND HAD MOVED OUT. PAGE 31 IS IDENTIFIED AS A REPORT FROM RAY SEIGER-NYSES AND "RECEIVED R.O. 8/16/78." THE CASE FILE IS NOT "CERTIFIED" (SECTION 655.122(A)). HOWEVER, ASSUMING THE AUTHENTICITY OF THE REPORT, I FIND THAT AS OF AUGUST 16, 1978, CLARENCE PEOPLE HAD NOT CONTACTED THE NIAGARA ORCHARDS AND CLARENCE PEOPLE'S WHEREABOUTS AND AVAILABILITY WERE UNKNOWN. THEREFORE, I FIND THAT PEOPLE'S CREW WAS NOT AVAILABLE. IN THE CIRCUMSTANCES, THE RA DENIAL OF THE APPLICATION FOR TEMPORARY LABOR CERTIFICATION IS REVERSED AND LABOR CERTIFICATION IS GRANTED.

THOMAS EGAN
HEARING OFFICER
U . S. DEPARTMENT OF LABOR