



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

DATE PREPARED SEPT. 29, 1978

RE: WESTERN RANGE ASSOCIATION'S REQUEST FOR  
EXPEDITED ADMINISTRATIVE-JUDICIAL REVIEW OF THE  
DENIAL BY REGIONAL ADMINISTRATOR JESS C.  
RAMAKER OF A TEMPORARY LABOR CERTIFICATION  
APPLICATION, 78-TLC-157.

ON SEPTEMBER 19, 1978, JOINT EMPLOYER WESTERN RANGE ASSOCIATION, REQUESTED REVIEW OF THE REGIONAL ADMINISTRATOR'S DENIAL OF THE EMPLOYER'S REQUEST FOR TEMPORARY LABOR CERTIFICATION FOR TWO (2) UNKNOWN ALIEN SHEEP HERDERS. APPEAL FILE, RECEIVED ON SEPTEMBER 25, 1978, HAS BEEN REVIEWED AND IT IS HEREBY CONCLUDED THAT THE REGIONAL ADMINISTRATOR'S RULING SHALL BE MODIFIED.

ON SEPTEMBER 13, 1978, THE REGIONAL ADMINISTRATOR. (RA) DENIED THE APPLICATION ON THE GROUNDS THAT THE APPLICATION DID NOT CONTAIN SPECIFIC PROVISIONS REQUIRED BY THE APPLICABLE REGULATIONS. THESE DEFICIENCIES ARE IDENTIFIED AND ENUMERATED IN THE NOTICE OF DENIAL. FOR INSTANCE, THE RA FOUND THE EMPLOYER'S JOB OFFER, INCLUDING THE CONTRACT OFFER, DOES NOT PROVIDE FOR THE WRITTEN PAY STATEMENTS REQUIRED BY 20 C.F.R. 202(b)(8); RETAINING RECORDS FOR THREE YEARS UNDER 20 C.F.R. 202(b)(7)(i.v.) AND THE DISCLAIMER STATEMENT, SIGNED BY THE EMPLOYER UNDER 20 C.F.R. 653(a)(2).

WESTERN RANGE ASSOCIATION REQUESTS THAT THE DENIAL BE SET ASIDE AND THAT THE REGIONAL ADMINISTRATOR BE DIRECTED TO APPROVE THE APPLICATION EFFECTIVE NO LATER THAN 60 DAYS FOLLOWING THE DATE OF FILING. THE REQUEST IS BASED ON ARGUMENTS PRESENTED IN THE EMPLOYER'S PETITION FOR REVIEW. IT IS NOT NECESSARY TO COMMENT ON EACH OF THE EMPLOYER'S ARGUMENTS BECAUSE OF THE DECISION REACHED IN THIS MATTER. FURTHER, MOST OF THE ARGUMENTS WERE PRESENTED BY THE SAME EMPLOYER IN 78-TLC-137 and 138, PREPARED 8-24-78. THE HEARING OFFICER'S COMMENTS IN THOSE CASES ARE ADOPTED HERE.

TWO OF THE EMPLOYER'S ASSERTIONS RELATE TO THE FOLLOWING

CLAUSE WHICH APPEARED IN THE NOTICE OF DENIAL: "BECAUSE OF PAST PRACTICES AND FAILURE TO TAKE APPROPRIATE ACTION, THE DEPARTMENT OF LABOR QUESTIONS THE ASSURANCE MADE BY THE EMPLOYER IN THE SUBJECT REQUEST." IN THAT REGARD, I AGREE WITH THE EMPLOYER THAT IF THERE WERE QUESTIONABLE PAST PERFORMANCES SUCH WOULD NOT CONSTITUTE GROUNDS FOR DENIAL IN THIS CASE. THE PROCEDURE TO BE FOLLOWED WHEN THERE IS A QUESTION REGARDING FAILURE TO COMPLY WITH THE TERMS OF A TEMPORARY LABOR CERTIFICATION ARE SET FORTH AT 655.210.

THE EMPLOYER ALSO RAISES THE QUESTION OF TIMELINESS BECAUSE OF THE FOUR MONTHS ELAPSED TIME FROM SUBMISSION OF THE APPLICATION AND ISSUANCE OF DENIAL. THE SAME EMPLOYER ALSO RAISED THAT QUESTION IN 78-TLC- THROUGH 127, PREPARED, JUNE 27, 1978, AND 78-TLC-137 AND 138, SUPRA. TN THOSE CASES THE HEARING OFFICERS FOUND THAT THE REGULATIONS CONVEY A SENSE OF URGENCY, AND THAT TIME LIMITS MUST BE ADHERED TO RATHER STRICTLY IN THAT LIGHT, I FIND THE DENIAL WAS NOT IN ACCORDANCE WITH 20 C.F.R. 655.204(c) IN THAT IT WAS UNTIMELY. HOWEVER, THE SCOPE AND PURPOSE OF THE REGULATIONS IS TO SECURE INFORMATION SUFFICIENT TO MAKE A FACTUAL DETERMINATION RELATIVE TO AVAILABLE U.S. WORKERS AND ADVERSE AFFECT ON SIMILARLY EMPLOYED U.S. WORKERS. THEREFORE, BASED ON THE UNTIMELY FILING OF THE DENIAL AND THE PURPOSE OF THE REGULATIONS, THE REGIONAL ADMINISTRATOR'S DETERMINATION OF SEPTEMBER 13, 1978, IS MODIFIED AS FOLLOWS:

- 1) THE DENIAL OF THE APPLICATION IS SET ASIDE;
- 2) WESTERN RANGE ASSOCIATION MAY AMEND THE APPLICATION WITHIN 5 WORKING DAYS FROM THE DATE THIS DECISION IS RECEIVED;
- 3) THEREAFTER, THE REGIONAL ADMINISTRATOR WILL PROMPTLY REVIEW THE APPLICATION, AND, IF HE FINDS THEM TO MEET THE REQUIREMENTS OF SECTIONS 655.202 AND 655.203, HE WILL PROCEED TO MAKE THE DETERMINATION REQUIRED BY SECTIONS 655.205 AND 655.206 AS SOON AS REASONABLY POSSIBLE, BUT WITHOUT REGARD TO THE PROVISIONS FOR A 60 DAY RECRUITMENT PERIOD.

THOMAS G. EGAN  
HEARING OFFICER