



**UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATOR LAW JUDGES**

Date Prepared: 4-24-79

RE: SLIMAN SHEEP CO., AND WESTERN RANGE ASSOCIATION (WRA) CASE NO.
79-TLC-10 AND KREBS BROTHERS, INC. AND WRA, 79-TLC-11

REFERENCED EMPLOYER(S), HEREAFTER EMPLOYER, REQUESTED EXPEDITED ADMINISTRATIVE JUDICIAL REVIEW UNDER 20 C.F.R. 655.212 FROM DENIAL(S) BY REGIONAL ADMINISTRATOR (RA), ETA, SEATTLE, WASHINGTON, DATED APRIL 5, 1979, OF TEMPORARY LABOR CERTIFICATION(S) FOR TWO (2) SHEEPHERDERS, ONE FOR EACH REFERENCED EMPLOYER. REQUEST FOR REVIEW RECEIVED APRIL 10, 1979, APPEAL FILE(S) RECEIVED APRIL 17, 1979.

ON APRIL 5, 1979, RA J.C. RAMAKER ADVISED - JOINT EMPLOYERS IN BOTH REFERENCED CASES THAT TEMPORARY LABOR CERTIFICATION APPLICATIONS FOR TWO SHEEPHERDER WORKERS WERE DENIED BECAUSE FOUND DEFICIENT (AF-5). DENIAL BASED ON THE UNDULY RESTRICTIVE REQUIREMENT OF SHEEPHERDER TRAINING FROM AGE OF SIX (6) YEARS, RA FOUND THAT THE RECRUITMENT OF U.S. WORKERS WOULD BE ADVERSELY EFFECTED (20 C.F.R. 655.204(c)) NOTING THAT DICTIONARY OF OCCUPATIONAL TITLES INDICATES THAT STANDARD TRAINING REQUIRED FOR OCCUPATION IS "OVER 30 -DAYS, UP TO INCLUDING 3 MONTHS."

EMPLOYER CONTENDS DENIAL UNTIMELY. WHILE 24 DAY DELAY FROM RECEIPT OF APPLICATION MAY NOT CONFORM TO "PROMPTLY" 20 C.F.R. 655.204(c), SUCH DELAY DOES NOT RENDER DECISION INVALID AND IS WITHIN 80 DAY TIME FRAME 20 C.F.R. 655.200(a).

EMPLOYER ALSO ADVISED THAT IT AUTHORIZED AND, HERE AGAIN DOES AUTHORIZE, THE DELETION OF THE JOB REQUIREMENT WHICH WAS GROUND FOR DENIAL. SOLICITOR, DEPARTMENT OF LABOR, IN HIS MEMORANDUM STATES THE EMPLOYER HAS CLEARLY INDICATED ITS WILLINGNESS TO DELETE THE OBJECTIONAL JOE REQUIREMENT FROM THE APPLICATION. (SUCH REQUIREMENT WAS THE BASIS FOR DENIAL.) THE SOLICITOR FURTHER STATES THAT GENERAL ADMINISTRATION LETTER NO. 24-79 PROVIDES IF AN APPLICATION IS TO BE DENIED AND THE DENIAL IS BASED ON CONDITION THAT CAN BE CORRECTED BY AMENDING THE APPLICATION, THE RA SHALL OFFER

THE EMPLOYER AN OPPORTUNITY TO AMEND WITHIN FIVE DAYS.

THE SOLICITOR CONTENDS THAT THE DECISION OF THE RA SHOULD BE REVERSED TO AFFORD THE EMPLOYER AN OPPORTUNITY TO AMEND ITS APPLICATION SO THAT IT COMPLIES WITH THE REGULATIONS. I AGREE THAT THE PROCEDURAL DEFECT RELATIVE TO THE APPLICATION SHOULD BE CORRECTED SO THAT THE RECRUITMENT PROCEDURES FOR LABOR CERTIFICATION MAY PROCEED. 20 C.F.R. 655.205.

ACCORDINGLY THE RA'S DECISION IS REVERSED AND THE EMPLOYER SHOULD HAVE AN OPPORTUNITY TO AMEND ITS APPLICATION. 20 C.F.R. 655.212(b).

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