



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

DATE PREPARED: 5/5/80

RE: WAGNER WOODLANDS & CO., 80-TLC-3

THE ABOVE-NAMED EMPLOYER APPEALED THE DENIAL OF A TEMPORARY LABOR CERTIFICATION BY THE REGIONAL ADMINISTRATOR (RA), DATED APRIL 24, 1980. APPEAL WAS RECEIVED ON APRIL 28, 1980 AND THE APPEAL FILE WAS RECEIVED ON APRIL 30, 1980. ON FEBRUARY 11, 1980, EMPLOYER FILED AN APPLICATION FOR TEMPORARY LABOR CERTIFICATION FOR 3 LOGGERS, ALL-AROUND FOR THE PERIOD MAY 12, 1980 THROUGH MARCH 20, 1981. THE RA DENIED CERTIFICATION ON THE GROUND THAT THE EMPLOYER, WHILE ASSERTING THAT HE HAD ADVERTISED IN COMPLIANCE WITH 20 C.F.R. §655.203(d)(2), HAD NOT PROVIDED HIM WITH COPIES OF THE ADVERTISEMENTS TO DOCUMENT THAT COMPLIANCE. WHILE NEITHER THE REGULATIONS AT PART 655 NOR THE RA'S LETTER OF FEBRUARY 22, 1980 ACCEPTING THE JOB OFFER SPECIFICALLY REQUIRE THAT COPIES OF THE ADVERTISEMENTS BE SUBMITTED TO DOCUMENT COMPLIANCE, THE RA MUST OBTAIN COPIES IN ORDER TO MAKE HIS DETERMINATION OF WHETHER THE ADVERTISEMENTS PLACED MEET THE REQUIREMENTS OF PART 655 WHICH IS PRECEDENT TO HIS GRANTING CERTIFICATION.

WHILE EQUITY WOULD PERSUADE ME TO AGREE WITH THE EMPLOYER'S POSITION THAT CERTIFICATION SHOULD BE GRANTED AS HE HAD PLACED THE ADVERTISEMENTS AND WAS NEVER TOLD SPECIFICALLY TO SUBMIT THEM, THE REGULATIONS PREVENT ME FROM CONSIDERING THE ADDITIONAL EVIDENCE OF THE EMPLOYER'S PLACEMENT OF THE ADVERTISEMENTS, 20 C.F.R. §655.212(a). UNDER THESE CIRCUMSTANCES, THE RECORD SUPPORTS THE RA'S FINDING AS THERE IS NO EVIDENCE OF EMPLOYER'S RECRUITMENT EFFORTS IN COMPLIANCE WITH 655.203. THE DENIAL OF CERTIFICATION WAS PROPER AND IS HEREBY AFFIRMED.

THIS IS THE FINAL DECISION OF THE DEPARTMENT OF LABOR ON THIS MATTER. FURTHER REVIEW MAY BE OBTAINED BY FILING A PETITION WITH THE DISTRICT

DIRECTOR, IMMIGRATION AND NATURALIZATION SERVICE IN YOUR
GEOGRAPHICAL AREA PURSUANT TO 8 CFR §214.2(h)(3)(1).

THIS DECISION IS BEING TRANSMITTED TO TIMOTHY M. BARNICLE, THE REGIONAL ADMINISTRATOR, THE ADMINISTRATOR OF THE U.S. EMPLOYMENT SERVICE, THE ASSOCIATE SOLICITOR FOR EMPLOYMENT & TRAINING, AND THE DIRECTOR OF IMMIGRATION AND NATURALIZATION SERVICE.

G. MARVIN BOBER
ADMINISTRATIVE LAW JUDGE
U.S. DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE
LAW JUDGES