



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

DATE PREPARED: 6/18/80

RE: KEITH BOHNE, 80-TLC-9

THE ABOVE NAMED EMPLOYER APPEALED THE DENIAL OF A TEMPORARY LABOR CERTIFICATION BY THE REGIONAL ADMINISTRATION (RD), DATED JUNE 5, 1980. APPEAL WAS RECEIVED ON JUNE 10, 1980 AND THE APPEAL FILE WAS RECEIVED ON JUNE 13. ON MAY 19, 1981 EMPLOYER FILED AN APPLICATION FOR A TEMPORARY LABOR CERTIFICATION FOR 2 FRUIT PICKERS, GIVING THE ESTIMATE DATE OF NEED FOR THE WORKERS AUGUST 1, 1980. THE RA DENIED CERTIFICATION BECAUSE THE APPLICATION WAS NOT FILED 80 DAYS PRIOR TO THE ESTIMATED DATE OF NEED AS REQUIRED BY 20 C.F.R. §655.201(c). EMPLOYER ASKS US TO SIMPLY TREAT HIS APPLICATION AS IF IT HAD BEEN FILED WITH THE DATE OF AUGUST 7 INSTEAD OF AUGUST 1, THE FORMER BEING 80 DAYS FROM THE DATE OF APPLICATION. HOWEVER, THE REGULATIONS DO NOT EMPOWER EITHER THE RA OR THE HEARING OFFICER TO TAKE THIS ACTION. THE RA WAS WELL WITHIN HIS DISCRETION TO DENY THE CERTIFICATION UNDER 20 C.F.R. §655.200(a) and §655.201(e). FURTHERMORE, EMPLOYER'S FILING COULD WELL HAVE BEEN REJECTED EVEN IF IT HAD BEEN TIMELY FILED. A REVIEW OF HIS JOB OFFER FAILED TO UNCOVER ANY PROVISIONS COMPLYING WITH 20 C.F.R. §655.201 (b) (4), (B) (10), (B) (11) and (B)(12), AS REQUIRED BY 20 C.F.R. §655.201(B) (1). SINCE EMPLOYER CLEARLY DID NOT MEET THE 80 DAY REQUIREMENT OF 20 C.F.R. §655.201(C), THE RA'S DENIAL MUST BE AFFIRMED. HOWEVER, APPLICANT IS ENCOURAGED TO RESUBMIT HIS APPLICATION WITH AN ESTIMATED DATE OF NEED FALLING 80 OR MORE DAYS AFTER THE DATE OF REFILING AND WHICH COMPLIES/WITH 20 C.F.R. §655.202(B)(4), (B) (10), (B) (11) AND (B)(12).¹ THIS IS THE

¹ALTERNATIVELY, APPLICANT MIGHT REFILE WITH AN ESTIMATED DATE OF NEED LESS THAN 80 DAYS FROM HIS RESUBMISSION AND ASK THE REGIONAL ADMINISTRATOR TO WAIVE THE 80 DAY REQUIREMENT UNDER 20 C.F.R. §655.201(f). THE RA SHOULD GIVE SERIOUS CONSIDERATION TO GRANTING SUCH A WAIVER GIVEN APPLICANT'S APPARENT GOOD FAITH, THE POSSIBLE HARDSHIP HE MIGHT SUFFER, AS WELL AS THE 2 1/2 WEEK SPAN BETWEEN 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 GEOGRAPHIC AREA PURSUANT TO 8 C.F.R. §214.2(H)(3)(1), THIS DECISION IS BEING TRANSMITTED TO BARBARA F. FARMER, THE ACTING REGIONAL ADMINISTRATOR, THE ADMINISTRATOR OF THE U.S. EMPLOYMENT SERVICE, THE ASSOCIATE SOLICITOR FOR EMPLOYMENT AND TRAINING AND THE DIRECTOR OF THE IMMIGRATION AND NATURALIZATION SERVICE.

G. MARVIN BOBER
Administrative Law Judge

FILING OF THE APPLICATION AND THE RESULTING DENIAL.