



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

DATE PREPARED: 8/6/80

RE: ZANIESKI FARMS, INC., 80-TLC-14

ON JULY 19, 1980, THE ABOVE-NAMED EMPLOYER APPEALED THE DENIAL OF A TEMPORARY LABOR CERTIFICATION BY THE REGIONAL ADMINISTRATOR (RA) DATED JULY 15, 1980. THE APPEAL FILE WAS RECEIVED ON AUGUST 1, 1980. ON JUNE 23, 1980, THE EMPLOYER FILED AN APPLICATION FOR A TEMPORARY LABOR CERTIFICATION FOR ONE FARM WORKER (WORKER, VEGETABLE I), GIVING THE ESTIMATED DATE OF NEED FOR THE WORKER AS APRIL 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). THE RA ALSO NOTED THE FOLLOWING DEFICIENCIES: 1. THE JOB DUTIES SPECIFIED BY THE EMPLOYER INCLUDED REPAIR WORK ON EQUIPMENT AND BUILDINGS WHICH IS NOT CUSTOMARY FOR THIS PORTION, AND 2. THE MINIMUM EXPERIENCE REQUIREMENT SPECIFIED BY THE EMPLOYER OF 2 YEARS EXPERIENCE IN AN AGRICULTURAL INSTITUTE GROWING VEGETABLES AND 2 YEARS EXPERIENCE WORKING ON A POTATO FARM OR 5 YEARS WORKING ON A VEGETABLE FARM ARE RESTRICTIVE AS THE DICTIONARY OF OCCUPATIONAL TITLES PROVIDES THAT 6 MONTHS UP TO AND INCLUDING 1 YEAR OF SPECIFIC VOCATIONAL PREPARATION IS THE STANDARD REQUIREMENT FOR THIS OCCUPATION. SECTION 755.200(a) OF THE REGULATIONS STATES THAT AN EMPLOYER WHO WISHES TO HIRE AN ALIEN FOR TEMPORARY EMPLOYMENT MUST FILE AN APPLICATION INCLUDING A JOB OFFER FOR U.S. WORKERS WITH A LOCAL OFFICE OF THE STATE EMPLOYMENT SERVICE AGENCY, AND THAT SUCH APPLICATION SHOULD BE FILED A MINIMUM OF 80 DAYS BEFORE THE ESTIMATED DATE OF NEED OF THE WORKERS IN ORDER TO ALLOW SUFFICIENT TIME FOR THE REQUIRED 60 DAY RECRUITMENT PERIOD FOR U.S. WORKERS. IF THE APPLICATION IS NOT TIMELY FILED THE RA HAS THE DISCRETION TO EITHER DENY THE APPLICATION OR PER-MIT THE PROCESS TO PROCEED WITH THE EMPLOYER RECRUITING WORKERS UPON SUCH TERMS AS WILL ACCOMPLISH THE PURPOSE OF THE REGULATIONS. THE RA WAS WELL WITHIN HIS DISCRETION TO DENY THE CERTIFICATION UNDER 20 C.F.R. §655.200(a) AND 20 C.F.R. §655.201(e), AS THE EMPLOYER FILED ITS APPLICATION OVER TWO MONTHS AFTER THE ESTIMATED DATE OF NEED. FOR THIS , REASON THE OTHER DEFICIENCIES CITED BY THE RA DO NOT NEED TO BE DISCUSSED.

THE DENIAL OF THE CERTIFICATION WAS PROPER AND IS HEREBY AFFIRMED. 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) (i). THIS DECISION IS BEING TRANSMITTED TO JAMES A. WARE, THE REGIONAL ADMINISTRATOR, THE ADMINISTRATOR OF THE U.S. EMPLOYMENT SERVICE, THE ASSOCIATE SOLICITOR FOR EMPLOYMENT & TRAINING, AND THE DIRECTOR OF THE IMMIGRATION AND NATURALIZATION SERVICE.

G. MARVIN BOBER
Administrative Law Judge