



In the Matter of

PETROCCO FARMS  
Employer

Case No. 84-TLC-8

Before:           GLENN ROBERT LAWRENCE

DECISION AND ORDER

This proceeding was initiated by the above-named employer who requested administrative-judicial review, pursuant to 20 C.F.R. §655.204(d) of the determination of a U.S. Department of Labor Regional Administrator in denial of an application for labor certification. The application was submitted by the employer on behalf of 36 unnamed aliens pursuant to Section 212(a)(14) of the Immigration and Nationality Act, 8 U.S.C. §1182(a)(14) (hereinafter, the Act).

Under Section 212(a)(14) of the Act, an alien seeking to enter the United States for the purpose of performing skilled or unskilled labor is ineligible to receive a visa unless the Secretary of Labor has determined and certified to the Secretary of State and to the Attorney General that (1) there are not sufficient workers in the United States, at the place where the alien is to perform the work, who are able, willing, qualified, and available at the time of application for a visa and admission into the United States, and (2) the employment of the alien will not adversely affect the wages and working conditions of United States workers similarly employed.

The procedures whereby such immigrant labor certifications may be applied for, and granted or denied, are set forth in 20 C.F.R. §655, as amended. An employer who desires to employ an alien on a temporary basis must demonstrate that the requirements of 20 C.F.R. §655.203 have been met. These requirements include the assurances of the employer to recruit U.S. workers at the prevailing wage, under prevailing working conditions through the public employment service, and by other reasonable means to make a good faith test of U.S. worker availability during a period for which temporary labor is needed.

This review of the denial of labor certification is based on the record upon which the denial was made, together with the request for review, as contained in an Appeal File (hereinafter, AF), and any written arguments of the parties pursuant to 20 C.F.R. §655.212(b) as received in this office on April 20, 1984.

## Statement of the Case

This case was initiated on February 1, 1984 when the Employer, an agricultural grower, filed an application for alien employment certification (AF-21), to enable Aliens to fill the temporary positions of farmworkers for vegetable crops (Occupational Code 402.687.010).

The position in issue required the aliens to work from May 1 through October 31, 1984 in preharvest and the actual harvest of Employer's crops. Weeding, thinning, transplanting, cutting, picking, packing, loading and stacking these crops is also outlined for this 7 a.m. to 5 p.m. Monday through Saturday position. Employer offers \$3.93 per hour in wages (AF-34). Applicants need one (1) month experience and must be at least 17 years old. Transportation and housing will be provided by the Employer (AF-33).

The State agency transferred the application for labor certification on February 6, 1984 (AF-35). Therefore, Employer was notified on March 12, 1984 that his application was timely and would not adversely affect U.S. workers similarly employed (AF-14). The letter also informed Employer of the great number of qualified experienced U.S. farmworkers in Texas due to a recent freeze causing crop damage and farmworker unemployment. Approximate numbers of workers for each county and boarder statistics were provided (AF-15).

Furthermore, the Regional Administrator (hereinafter, RA) provided specific guidelines for Employer to develop an itinerary to recruit and interview workers through the Colorado Job Service:

Colorado Job Service will work with you in developing an itinerary to recruit workers, or to interview, with specific dates and locations.

3. Interview all U.S. workers, including crew leaders, referred by the Job Service, and contact workers, family heads, or crew leaders by phone, or in person, upon their request.

The employer may travel to the local office(s) to interview and hire workers; send a representative; or delegate authority to the local office staff of Texas Employment Commission to perform those functions.

If, you do not participate in this essential part of the recruitment process, every U.S. worker found qualified and available by the ES shall be counted as available in determining the supply of U.S. workers for your job offer.

4. Document all referrals, interviews, and results and, if worker(s) is/are not hired, state the job-related reason."

Further, the RA indicated that "[I]n order to make the determination on whether to grant or deny the certifications 20 days before the stated date of need, you must write and let our office know by April 7, 1984, which is 25 days before the above listed certification date, the results of your efforts to satisfy the above requirements" (AF-16). The Colorado Division of Employment &

Training was also notified on the same date of the RA's suggested Texas recruitment and the April 7, 1984 report date deadline (AF-12).

On March 28, 1984, Employer submitted advertisement verification, Job Service contact lists, and an indication that past employees were contacted and the available hired for this harvest (AF-18). No other correspondence was received from Employer.

Unable to assess Employer's good faith effort to meet their burden to conduct recruitment, locate, and hire U.S. workers for the 36 available positions, the RA issued his final determination denying temporary labor certification on April 12, 1984 (AF-4). Employer's March 28, 1984 letter lacked specific results or recruitment efforts to provide appraisal perimeters for review. Texas worker availability was not addressed or pursued, as outlined previously, by initiating onsite positive recruitment efforts or giving the Texas Employment Commission hiring authority (AF-5). Without any documentation by Employer of directive implementation, as provided under 20 C.F.R. 655.206(a), or other good faith efforts for full compliance, the RA concluded that the burden of proof under §212 (a)(14) of the INS had not been met (AF-6).

Furthermore, Employer never submitted recruitment results by the April 7, 1984 deadline contained in the application acceptance letter of March 13, 1984 and required by 20 C.F.R. §655.203. Therefore, both untimeliness and failure to comply with the regulations for recruitment and RA directives formed the bases for certification denial.

#### Position of the Employer

Employer, in an appeal dated April 15, 1984 (AF-2), argued that the information concerning the Texas job market which the RA relied on was false. The Employer also stated that no lists of available workers from Texas were provided by the RA and that Texas workers were not available until schools were out. Stating that he complied with 20 C.F.R. §655.203, requested administrative review.

#### Discussion

Labor certification must be denied and the RA'S decision affirmed.

The requirements of the regulations provide guidelines for RA direction and assistance in the recruitment process. 20 C.F.R. §655.205(a). If the Employer fails to meet the assurances contained in 20 C.F.R. §655.203 with respect to recruitment of U.S. workers, certification must be denied. Job orders must be sought by the Employer both intra- and interstate states the RA shall determine potential sources of U.S. workers.

The RA, in his letters dated March 13, 1984, informed both Employer and the Colorado Employment Commission of Texas worker availability and suggested areas of potential concentration. Failure of the Employer to act upon this information by onsite recruitment efforts or a grant of hiring authority to the Texas agency specifically ignored a potential wealth of U.S. worker availability and undermines the very essence of the Act, that being the protection of U.S.

workers. Employer asserts that the Texas market figures provided by the RA are false, yet provides no documentation to determine the credibility of his challenge. Further, he notes unavailability of Texas workers until school is out. This makes no sense due to the fact that school enrollment obviously affects only those under the age of 17 who, by job description, are ineligible for employment. Therefore, I agree with the RA that Employer did not meet his recruitment burden under the assurances he provided to recruit U.S. workers 20 C.F.R. §§655.203(d)(3), .203(e).

Furthermore, failure of Employer to file specific recruitment results within the deadlines provided by the RA violates 20 C.F.R. 203 and confirms justification of certification denial as reflective lack of good faith effort by this Employer to conform his efforts to the regulatory requirements and actively seek U.S. worker availability.

Order

In view of the foregoing, the determination of the Certifying Officer denying the Employer's application for labor certification is AFFIRMED.

GLENN ROBERT LAWRENCE  
Administrative Law Judge

Dated: APR 26 1984  
Washington, D.C.

GRL:ll:crg