



Date: **October 18, 2000**

Case No.: **2000-TLC-15**

ETA Case: **T2000-IL-054385940**

In the Matter of:

HAAG FARMS, INC.
Respondent

BEFORE: Thomas M. Burke
Associate Chief Administrative Law Judge

ORDER DENYING RECONSIDERATION

On October 12, 2000, the undersigned issued a decision and order in the above-captioned case. On October 16, 2000, this Office received a *Motion for Reconsideration* from the U.S. Department of Labor, Employment and Training Legal Services (“ETA”). In this motion, ETA asserts that the decision should be reconsidered for two reasons: that “the decision is mistaken insofar as it holds that an application covering three months in 2000 establishes a need for nine months in 2001,” and that “the only remedy available upon reversal of the RA’s action is the acceptance of the application.”

ETA’s first argument is based on an incorrect interpretation of the Employer’s need. Specifically, Employer needs help now, for the remainder of the 2000 season, and that is what is covered by the application. This argument appears to be an indirect reference to the original application, which also covered a significant portion of the 2001 season. However, since that application was amended to the period discussed by the decision, it is unavailable as a basis for rejecting the application. Further, while Employer’s argument may also be seen to cover the next growing season, it is directed to the portion covered by the application. This argument thus presents no reason for reconsideration.

It is next noted that ETA appears to argue in a footnote that the citation of *Brancy’s Nursery*, 2000-TLC-11 was improper. First, ETA again misconstrues the use of the citation. This case was not cited to provide authority for the examination of parallel work activities, but for the simple proposition that it is important to look at the entirety of an employer’s operation to determine the true nature of its need. In fact, *Brancy’s Nursery* presents an excellent case study showing that such an examination may also be used to determine that an employer’s need is not such as to justify certification, and was cited for that fact alone.

Finally, ETA argues that the final order must be clarified. Having reviewed the decision, it appears clear that it only addresses the Regional Administrator's decision to reject the application. The decision never purported to exempt Employer from the recruitment process or any other procedure that remains to be conducted. The decision only addressed that which was presented to this office. As ETA correctly states, the only remedy available was acceptance. As such, no clarification is necessary, and there is no rationale for reconsideration of the decision. Accordingly,

ORDER

IT IS ORDERED that ETA's *Motion for Reconsideration* is **DENIED**.

at Washington, DC

THOMAS M. BURKE
Associate Chief Administrative Law Judge