

**U.S. Department of Labor**

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**Issue Date: 20 April 2011**

**OALJ Case No.: 2011-TLC-00381**

**ETA Case No.: C-11076-28631**

*In the Matter of*

**FRANK SHEPARD,**  
*Employer*

Certifying Officer: William L. Carlson  
Chicago Processing Center

**ORDER OF DISMISSAL**

On April 1, 2011, Frank Shepard (“the Employer”) filed a request for review in the above-captioned temporary alien labor certification matter. On April 6, 2011, this Office received notice from the Certifying Officer (“CO”) that based on a reevaluation of the outstanding issues, the Employer’s H-2A application had been accepted for processing on April 4, 2011. Accordingly, the CO requested dismissal of this appeal on the ground that it is moot. The Employer’s attorney objected to the dismissal of the appeal until he had the opportunity to verify that the Employer received the Notice of Acceptance (“NOA”) from the CO.

On April 18, 2011, the Employer’s attorney withdrew his objection and confirmed that the Employer received the NOA in this matter. The Employer argues that the delay in processing the Employer’s H-2A application has jeopardized the Employer’s time-sensitive agricultural tasks and requests that I include language in this Order making it clear that there was no factual or legal basis for the Department of Labor’s denial. I decline to do so. The CO has issued an NOA, and therefore, the issue on appeal is moot. Moreover, as I do not have the administrative file or even a copy of the CO’s denial letter, it would be wholly inappropriate to speculate on the merits of this case. Finally, while I recognize that the appeal process did take time for the Employer, the CO reconsidered his determination and issued an NOA within three days of the Employer’s request for review, thereby sparing all parties and this Office the time and expense of a hearing. Such reconsideration of a determination is exactly what I encouraged

in the Remand Order in *Virginia Agricultural Growers Association, Inc.*, 2011-TLC-273 (Feb. 11, 2011). In light of the foregoing, it is hereby **ORDERED** that this matter is **DISMISSED**.

A

**WILLIAM S. COLWELL**

Associate Chief Administrative Law Judge