

U.S. Department of Labor

Office of Administrative Law Judges
800 K Street, NW, Suite 400-N
Washington, DC 20001-8002

(202) 693-7300
(202) 693-7365 (FAX)



Issue Date: 22 April 2011

Case No.: **2011-TLC-00338**

ETA Case No: C-11055-28050

In the Matter of:

JERROLD A. WATSON & SONS,
Employer.

ORDER OF REMAND

The instant case, which arises under the temporary agricultural labor or services provision of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(ii)(a) and its implementing regulations found at 20 C.F.R. Part 655 Subpart B, has been assigned to the undersigned administrative law judge for appropriate proceedings. It involves a March 22, 2011 request for a de novo hearing by Employer Jerrold Watson & Sons (“Employer”). *See* 20 C.F.R. §655.164. The administrative file has not been received, although an e-mail from the Chicago National Processing Center purportedly transmitted it on March 30, 2011; however, there were no attachments to the e-mail.

By e-mail of April 8, 2011, Vincent C. Costantino, Esq., Office of the Solicitor, advised that based on the Certifying Officer’s review, the instant case (along with others) was accepted for processing, noted that the “NOA” (notice of acceptance for processing) was issued on April 7, 2011, and requested that the case be remanded to the Certifying Officer for further processing. He further advised that the Employer’s counsel had been sent a copy of the e-mail but did not indicate whether Employer had agreed to this request. By an e-mail of the same date, relating to this and other cases, counsel for the Employer (Leon R. Sequeira, Seyfarth Shaw LLP) advised that he objected to “dismissal of any pending appeal” until he verified that his client actually received an acceptance or certification letter. As it was unclear whether Employer agreed to the remand, I sent out an e-mail to the parties on April 13, 2011 asking whether there was an agreement and, if not, stating that I would like to set up a conference call. In response, counsel for Employer indicated that he objected to the remand but that once the Department had accepted or certified the applications in question, they would be able to quickly dispose of the appeals, probably by the end of the week, unless additional issues came up.

In an e-mail to the Chief Judge of April 15, 2011, relating to the instant case and other cases, counsel for Employer asked that an Order of Remand be issued in 32 cases including the instant case. However, he also complained about Departmental procedures and asked that “each Order of Remand specifically reference the issues raised in the appeal and note that the Department’s position with regard to each issue was unjustified,” and that as a result, the

Department had “improperly delayed” the application and “reversed itself.” Inasmuch as I have not received the administrative file, I am not in a position to issue a ruling on those matters. However, I request that in the future, the CO promptly transmit a copy of the administrative record unless the employer agrees to dismissal or remand. This case is particularly troublesome because the CO represented that the file was being transmitted when, in fact, it was not.

Inasmuch as the parties agree that this matter should be remanded to the CO for further processing, it will be remanded. Accordingly,

ORDER

IT IS HEREBY ORDERED that this matter is **REMANDED** to the Certifying Officer for further processing.

A

PAMELA J. LAKES
Administrative Law Judge

Washington, D.C.