

**U.S. Department of Labor**

Office of Administrative Law Judges  
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**Issue Date: 06 April 2011**

**OALJ Case No: 2011-TLC-00340**

**ETA Case No: C-11069-28446**

*In the Matter of*

**MOSELEY BROTHERS FARM,**  
*Employer*

**ORDER OF REMAND**

On March 22, 2011, Moseley Brothers Farm (“the Employer”) filed a request for a *de novo* hearing reviewing the Certifying Officer’s determination in the above-captioned temporary agricultural labor certification matter. *See* 8 U.S.C. §§ 1101(a)(15)(H)(ii)(a), 1184(c)(1); 20 C.F.R. § 655.115(a) (2009). On March 28, 2011, the Certifying Officer (“CO”) forwarded the Appeal File (“AF”) to the Office of Administrative Law Judges.

On March 9, 2011, the United States Department of Labor’s Employment and Training Administration received an application from International Labor Management Corporation (ILMC) on behalf of the Employer. On March 16, 2011, the CO issued a Notice of Deficiency (NOD) AF 3-5.

The deficiency was based on an alleged failure by the Employer to comply with the regulatory provision at 20 CFR 655.122(b) relating to job qualifications because the Employer’s Job Order contains an arbitration clause relating to employee grievances. This clause provided that:

The employer provides a grievance and arbitration procedure for the resolution of all grievances by workers arising out of employment under this Clearance Order. This procedure must be used to resolve all grievances. This grievance and arbitration procedure is provided as an alternative to private litigation, and does not constitute a waiver of any rights prohibited under 29 C.F.R. §501.4.

AF 6, paragraph P.

The NOD directed that:

The employer must either remove the language described above or submit evidence that including such language in job contracts and requiring workers to use a grievance and arbitration procedure is normal and

accepted by employers that do not use H2A workers in the same or comparable occupations and crops.

AF 3.

In a conference call on April 4, 2011, counsel for the Department conceded that the record does not support the NOD. The Department has agreed to accept the application in the form and with the content contained in the March 9, 2011 application. The Department further agreed that it has completed its review of the Employer's application; that there are no deficiencies in the application; and no further Notices of Deficiencies or requests for modifications will be issued with regard to this application, whether related to the grievance and arbitration clause or any other matter. Therefore, the Department has requested remand of the case to the CO so that processing of the application can proceed.

Therefore, in accordance with this concession by the Department, this case is remanded to the CO for acceptance of the application with the disputed arbitration and grievance language. The Department shall expedite processing of the Employer's application and the acceptance letter shall be issued immediately upon the Department of Labor's receipt of the ALJ's remand order. The acceptance letter will give the Employer up to seven calendar days to comply with the remaining requirements for certification that are within his control, but he shall not be required to advertise on a Sunday. If the Employer has fulfilled his obligations under the regulations, including requesting and obtaining a housing inspection, the CO shall grant certification of this application no later than six days after issuance of the acceptance letter.

#### **ORDER**

**IT IS HEREBY ORDERED** that this matter is **REMANDED** to the Certifying Officer for further processing in accordance with the findings above.

A

KENNETH A. KRANTZ  
Administrative Law Judge

KAK/mrc  
Newport News, Virginia