



**U.S. DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES**

DATE PREPARED 9-5-78

RE: SENCO FARMS, CASE NO.
78-TLC-143

THIS DECISION INVOLVES THE APPLICATION FOR TEMPORARY LABOR CERTIFICATION OF 40 ALIEN AGRICULTURAL WORKERS FILED BY SENCO FARMS (EMPLOYER) PURSUANT TO THE REQUIREMENTS OF THE IMMIGRATION AND NATIONALITY ACT (ACT) AND IMPLEMENTING REGULATIONS ISSUED BY THE IMMIGRATION AND NATIONALITY SERVICE (INS) AND THE SECRETARY OF LABOR (SECRETARY). 8 U.S.C. §1101 ET SEQ., 8 CFR §214.2(H)(3)(I), 20 §655 ET SEQ.

THIS DECISION IS BASED ON THE EMPLOYER'S REQUEST, PURSUANT TO 20 CFR §655.206(C), FOR AN EXPEDITED ADMINISTRATIVE-JUDICIAL REVIEW OF THE DENIAL OF LABOR CERTIFICATION BY THE REGIONAL ADMINISTRATOR, U.S. DEPARTMENT OF LABOR, EMPLOYMENT AND TRAINING ADMINISTRATION, NEW YORK, NY,(RA) AND IS ISSUED IN ACCORDANCE WITH THE PROCEDURES UNDER 20 CFR §655.212.

THE ACT AND APPLICABLE REGULATIONS REQUIRE, IN SUPPORT OF PETITIONS FOR ADMISSION OF ALIENS TO WORK TEMPORARILY IN THE U.S., CERTIFICATION FROM THE SECRETARY THAT QUALIFIED U.S. WORKERS ARE UNAVAILABLE AND THAT THE EMPLOYMENT OF ALIENS WILL NOT ADVERSELY AFFECT THE WAGES AND WORKING CONDITIONS OF U.S. WORKERS SIMILARLY EMPLOYED.

THE EMPLOYER NEEDS A TOTAL OF 125 WORKERS AND SEEKS TO HAVE CERTIFIED 40 ALIENS TO HELP HARVEST APPLE AND PEAR CROPS BY HAND IN WAYNE COUNTY, NY.

ON AUGUST 22, 1978, THE RA DENIED CERTIFICATION, PURSUANT TO §655.206(A)(1), ON THE GROUND THAT 178 U.S. WORKERS ARE AVAILABLE TO FILL THE EMPLOYER'S JOB OPPORTUNITIES. .

ON APPEAL (THE CASE FILE WAS RECEIVED IN THIS OFFICE ON AUGUST 30, 1978) THE EMPLOYER ASSERTS THAT HE REQUIRES CERTIFICATION IN THE

EVENT THAT SOME OF HIS HELP "DOES NOT FOLLOW THROUGH IN COMING FOR THE HARVEST."

IT APPEARS FROM THE RECORD THAT THE EMPLOYER HAS COMPLIED, TO THE SATISFACTION OF THE RA, WITH ALL THE REQUIRED ASSURANCES, STANDARDS AND CONDITIONS NECESSARY FOR THE PROCESSING OF HIS APPLICATION. THEREFORE, IN THE EVENT THE U.S. WORKERS FAILED TO REPORT FOR WORK, THE EMPLOYER WOULD APPEAR TO BE IN POSITION TO RELY ON THE EMERGENCY PROVISIONS UNDER § 655.201(3)(E) OF THE REGULATIONS OR TO RELY ON SUCH FAILURE AS NEW EVIDENCE AND A BASIS TO SEEK RELIEF IN ACCORDANCE WITH THE INS REGULATION 8 CFR §214.2(H)(3)(A)(I).

THE ISSUE TO BE DETERMINED HERE IS WHETHER THERE ARE ENOUGH U.S. WORKERS AVAILABLE TO FILL THE EMPLOYER'S JOB OPPORTUNITIES. THE RA'S FINDING THAT THERE ARE PROVIDES A VALID GROUND FOR DENYING CERTIFICATION. ACCORDINGLY, IT IS AFFIRMED.

AARON SILVERMAN
Hearing Officer