



DATE PREPARED: 5-1-79

RE: "ALLEN & SONS, LTD," CASE NO. 79-TLC-15

ON APRIL 17, 1979, ALLEN & SONS, LTD., (THE "EMPLOYER"), SENT THE U.S. DEPARTMENT OF LABOR A REQUEST FOR ADMINISTRATIVE-JUDICIAL REVIEW OF A REGIONAL ADMINISTRATOR'S DENIAL OF THE EMPLOYER'S APPLICATION FOR TEMPORARY LABOR CERTIFICATION FOR 25 LOGGING-OCCUPATION WORKERS FOR THE PERIOD MAY 1, 1979-MARCH 31, 1980. THE REGIONAL ADMINISTRATOR'S DENIAL, DATED APRIL 13, 1979, WAS BASED ON THE EMPLOYER'S FAILURE TO SUBMIT DOCUMENTATION OF THE RESULTS OF RECRUITMENT EFFORTS (PLACEMENT OF JOB ORDER INTO CLEARANCE, ADVERTISING) SPECIFIED IN 20 C.F.R. 655.203. THE EMPLOYER'S TELEGRAM REQUESTING REVIEW DID NOT CONTEND THAT IT HAD SUBMITTED SUCH DOCUMENTATION, BUT RATHER SAID, "DOCUMENTATION OF THE RESULTS OF RECRUITMENT ARE FOLLOWING IN A LETTER IMMEDIATELY."

THE REGULATORY PROVISIONS PERTAINING TO ADMINISTRATIVE JUDICIAL REVIEW PROVIDE, AT 20 C.F.R. 655.212(a), THAT THE HEARING OFFICER ASSIGNED TO THE CASE MAY CONSIDER ONLY THE "LEGAL SUFFICIENCY" OF THE REGIONAL ADMINISTRATOR'S DENIAL IN THE LIGHT OF THE CASE FILE SUBMITTED BY THE REGIONAL ADMINISTRATOR TO THE CHIEF ADMINISTRATIVE LAW JUDGE, "AND SHALL NOT RECEIVE EVIDENCE."

INCLUDED IN THE CASE FILE IS A LETTER, DATED FEBRUARY 19, 1979, SENT PURSUANT TO 20 C.F.R. 655.105, FROM THE REGIONAL ADMINISTRATOR TO THE EMPLOYER, NOTIFYING IT OF THE INITIAL ACCEPTABILITY OF THE APPLICATION, STATING THAT THE 60-DAY RECRUITMENT PERIOD WOULD BEGIN ON FEBRUARY 2, 1979, SPECIFYING THE RECRUITMENT EFFORTS TO BE MADE BY THE EMPLOYER AS A PREREQUISITE TO ITS RECEIPT OF A TEMPORARY LABOR CERTIFICATION BY APRIL 11, 1978, AND, FINALLY, STATING, "DOCUMENTATION OF YOUR RECRUITMENT EFFORTS SHOULD BE RECEIVED IN THIS OFFICE BY APRIL 1, 1979."

TITLE 20 C.F.R. 655.206(a) PROVIDES THAT THE REGIONAL ADMINISTRATOR SHALL, BY THE 60TH DAY OF THE RECRUITMENT PERIOD OF 20 DAYS BEFORE THE DATE OF NEED SPECIFIED IN THE APPLICATION, WHICHEVER IS LATER, SHALL -- ONLY IF HE HAS DETERMINED THAT THE EMPLOYER HAS COMPLIED WITH THE RECRUITMENT ASSURANCES DESCRIBED AT 20 C.F.R. 655.2:03 -- "GRANT THE TEMPORARY LABOR CERTIFICATION FOR ENOUGH ALIENS TO FILL THE EMPLOYER'S JOB OPPORTUNITIES FOR WHICH U.S. WORKERS ARE NOT AVAILABLE." SECTION 655.203 REQUIRES THE EMPLOYER TO SUBMIT A SIGNED ASSURANCE THAT, AMONG OTHER

THINGS: "(c) THE JOB OPPORTUNITY IS OPEN TO ALL QUALIFIED U.S. WORKERS WITHOUT REGARD TO RACE, COLOR, NATIONAL ORIGIN, SEX, OR RELIGION, AND IS OPEN TO U.S. WORKERS WITH HANDICAPS WHO ARE QUALIFIED TO PERFORM THE WORK. NO U.S. WORKER WILL BE REJECTED FOR OTHER THAN A LAWFUL JOB RELATED REASON."

FROM THE FOREGOING, IT IS CLEAR THAT THE REGIONAL ADMINISTRATOR CANNOT GRANT A TEMPORARY LABOR CERTIFICATION IN THE ABSENCE OF INFORMATION FROM THE EMPLOYER AS TO WHETHER QUALIFIED U.S. WORKERS HAVE INDICATED TO HIM THEIR AVAILABILITY FOR ANY OF THE JOB OPPORTUNITIES IN QUESTION, AND WHETHER THE EMPLOYER, IN RESPONDING TO SUCH INDICATIONS, HAS COMPLIED WITH THE ABOVE-QUOTED SECTION 656.203(c) ASSURANCE.

THUS, IT IS CLEAR THAT THE REGIONAL ADMINISTRATOR'S CALL FOR DOCUMENTATION OF RECRUITMENT-EFFORT RESULTS WAS ENTIRELY APPROPRIATE, AND THE EMPLOYER'S FAILURE TO SUBMIT SUCH DOCUMENTATION, PROVIDES AMPLE JUSTIFICATION FOR THE DENIAL OF THE LABOR CERTIFICATION.

ACCORDINGLY, IT IS ORDERED THAT THE REGIONAL ADMINISTRATOR'S DENIAL OF THE APPLICATION FOR TEMPORARY LABOR CERTIFICATION IS AFFIRMED. THIS IS THE FINAL DECISION OF THE DEPARTMENT OF LABOR IN THIS MATTER. FURTHER REVIEW MAY BE OBTAINED BY FILING A PETITION WITH THE DISTRICT DIRECTOR, IMMIGRATION AND NATURALIZATION SERVICE, IN YOUR GEOGRAPHIC AREA PURSUANT TO 8 C.F.R. 214.2(h)(3)(i).

THIS DECISION, ISSUED PURSUANT TO 20 C.F.R. 655.212(b) IS BEING TRANSMITTED TO ALLEN & SONS, LTD., THE REGIONAL ADMINISTRATOR, THE U.S. EMPLOYMENT SERVICE, THE ASSOCIATE SOLICITOR FOR EMPLOYMENT AND TRAINING, AND THE DIRECTOR, I.N.S.

WALTER MORSE
HEARING OFFICER
U.S. DEPARTMENT OF LABOR