



DATE PREPARED: 8/26/80

RE: SCRODIN BROTHERS FARM, 80-TLC-15

THIS IS A DECISION IN RESPONSE TO THE REQUEST BY SCRODIN BROTHERS'S FARM FOR EXPEDITED ADMINISTRATIVE JUDICIAL REVIEW, PURSUANT TO 20 C.F.R. SECTION 655.212 OF A DENIAL OF PART OF ITS APPLICATION FOR TEMPORARY LABOR CERTIFICATION.

ON JUNE 5, 1980, THE EMPLOYER FILED AN APPLICATION FOR TEMPORARY LABOR CERTIFICATION FOR SEVEN ALIEN WORKERS TO ASSIST IN THE HARVESTING OF THE 1980 APPLE CROP IN LINLITHGO, NEW YORK. ESTIMATED PERIOD OF SEASON IS FROM SEPTEMBER 1, 1980 TO NOVEMBER 15, 1980.

ON AUGUST 12, 1980 THE CERTIFYING OFFICER GRANTED TEMPORARY LABOR CERTIFICATION FOR THREE ALIEN WORKERS AND DENIED CERTIFICATION FOR THE REMAINING FOUR. THIS DECISION WAS BASED ON THE FACT THAT THERE WERE TWENTY TWO U.S. WORKERS AVAILABLE TO FILL EMPLOYER'S PICKING NEEDS. THE RECORD INDICATES THAT RUFUS MULDROW, WITH A CREW OF TWELVE, SAM THOMAS WITH A CREW OF NINE, AND ALVIN HARELY ALL GAVE FIRM COMMITMENTS TO HARVEST EMPLOYER'S FRUIT.

BEN SCRODIN ADVISED IN HIS APPEAL TELEGRAM THAT CREW LEADER SAM THOMAS NOW INTENDED TO BRING SEVEN INSTEAD OF NINE WORKERS AND THAT CERTIFICATION FOR TWO ADDITIONAL ALIENS WOULD BE REQUIRED TO MEET EMPLOYER'S NEEDS FOR TWENTY-FIVE WORKERS.

THE FACTS WHICH LED SCRODIN TO BELIEVE THAT THERE WOULD BE A POSSIBLE REDUCTION IN THOMAS'S WORK CREW OCCURRED AFTER THE CERTIFYING OFFICER'S DECISION. ACCORDING TO SECTION 655.212(A) THIS "KNOWLEDGE" ON THE PART OF THE EMPLOYER CONSTITUTES ADDITIONAL EVIDENCE WHICH MAY NOT BE CONSIDERED BY THE ADMINISTRATIVE LAW JUDGE.

20 C.F.R. 655.212(A) AUTHORIZES A HEARING OFFICER, IN HIS ADMINISTRATIVE-JUDICIAL REVIEW, TO CONSIDER ONLY THE "LEGAL SUFFICIENCY" OF THE RECORD UPON WHICH THE DENIAL OF LABOR CERTIFICATION WAS BASED.

THE RECORD IN THIS CASE IS LEGALLY SUFFICIENT FOR A FINDING THAT TWENTY-TWO U.S. WORKERS WOULD BE AVAILABLE FOR THE HARVEST SEASON.

ACCORDINGLY, IT IS ORDERED THAT THE CERTIFICATION FOR THREE ALIEN WORKERS, INSTEAD OF SEVEN, IS AFFIRMED.

JUDGE ROBERT J. FELDMAN
ADMINISTRATIVE LAW JUDGE