



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

DATE PREPARED 6-18-86

RE: SPRUCE SHADOWS FARM (86-TLC-5)

DECISION AND ORDER

BY TELEGRAM DATED JUNE 3, 1986, THE EMPLOYER WAS NOTIFIED BY THE REGIONAL ADMINISTRATOR THAT HIS APPLICATION FOR TEMPORARY LABOR CERTIFICATION FOR ONE SHEEPHERDER WAS DENIED.

THE SPECIFIC REASONS GIVEN FOR THE DENIAL WERE AS FOLLOWS:

(1) THERE ARE NINE (9) U. S. WORKERS AVAILABLE TO FILL THE JOB OPPORTUNITY.

(2) DOCUMENTATION OF ALL APPLICANT REFERRALS AND RESULTS WERE NOT PROVIDED BY THE EMPLOYER IN ACCORDANCE WITH THE EMPLOYMENT SERVICE REGULATIONS AT 20 C.F.R. 655.205 AND 206.

UNDER 20 C.F.R. §655.212(A) I MAY CONSIDER ONLY THE LEGAL SUFFICIENCY OF THE RECORD UPON WHICH THE DENIAL OF TEMPORARY LABOR CERTIFICATION WAS BASED. A REVIEW OF THE RECORD IN THE PRESENT CASE REVEALS A NOTE TO THE FILE DATED JUNE 6, 1986 IN WHICH IT IS NOTED THAT THE JOB SERVICE ALIEN CERTIFICATION OFFICER CALLED THE EMPLOYMENT AND TRAINING ADMINISTRATION TO STATE THAT THE EMPLOYER HAD DROPPED OFF HIS RESPONSE TO THE REGIONAL ADMINISTRATOR'S TELEGRAM. INCLUDED IN HIS RESPONSE WERE HIS RECRUITMENT RESULTS. BECAUSE THIS EVIDENCE WAS SUBMITTED AFTER THE REGIONAL, ADMINISTRATOR ISSUED HIS DENIAL, THE JOB SERVICE OFFICER WAS TOLD TO RETURN THE RESPONSE AND SUPPORTING DOCUMENTATION TO EMPLOYER.

ACCORDINGLY THIS INFORMATION DOES NOT APPEAR IN THE RECORD. EVEN ASSUMING IT WERE IN THE RECORD SECTION 655.212(A) WOULD PRECLUDE ITS USE AS EVIDENCE ON REVIEW.

SECTION 655.212(A) STATES THAT "ANY COUNTERVAILING EVIDENCE ADVANCED AFTER DECISION BY THE REGIONAL ADMINISTRATOR SHALL, BE SUBJECT TO PROVISIONS OF 8 C.F.R. 214.2(H) (3)(I)." ALTHOUGH FURTHER REVIEW BY THE DEPARTMENT OF LABOR IS PROHIBITED BY §655.212(B), THE EMPLOYER HAS THE OPPORTUNITY TO SUBMIT THE EVIDENCE TO THE IMMIGRATION AND NATURALIZATION SERVICE TO REBUT THE DETERMINATION.

FOR THE REASONS SET FORTH ABOVE, AND BASED ON THE ENTIRE RECORD, THE DETERMINATION OF THE REGIONAL ADMINISTRATOR DENYING THE EMPLOYER'S APPLICATION FOR TEMPORARY LABOR CERTIFICATION IS AFFIRMED.

ROBERT J. SHEA  
ADMINISTRATIVE LAW JUDGE

THIS 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 GEOGRAPHICAL AREA PURSUANT TO 8 C.F.R. 214.2(h)(3)(i).

WASHINGTON, D.C.

RJS:ga