



DATE: AUG 30 1994

Case No.: 94-TLC-8

In the Matter of

ORME RANCH,
Complainant

vs.

U. S DEPARTMENT OF LABOR,
Respondent

Appearances:

Lisa Perez Bray, for the Employer
Vincent C. Costantino, Esq., for the U. S. Department of Labor

Before: SAMUEL B. GROIUER
Administrative Law Judge

DECISION AND ORDER

Introductory Statement

The Employer named above (Orme) requests review of the denial by a Department of Labor (DOL) Certifying Officer (CO) of an application for temporary alien agricultural labor certification on behalf of Alien Jose de Jesus Duarte-Higuera. The case arises under the immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(h)(ii)(A), as amended by the Immigration Reform and Control Act of 1986, Pub. L. 99-603, 100 Stat. 1411, 1416 (1986), and implemented by the regulations in Part 655 of Title 20, Code of Federal Regulations. This Decision and Order is based on the written record of the case, which consists of the DOL Employment and Training Administration Appeal File (AF), and is made after consideration of written arguments submitted by the respective parties in accordance with 20 C.F.R. 655.112(a)(2).

The provision referred to allows employers in this country to obtain admission to the United States of an alien worker to take a specific temporary agricultural job, if the Secretary of Labor certifies (1) that there are not enough United States workers at that time who are able, willing, qualified, and available for that job in the place where the work is to be done, and (2) that employment of the alien will not adversely affect the wages' and working conditions of United States workers similarly employed.

An employer seeking to take advantage of this special provision of the Act is required to comply strictly with those requirements, and of course bears the burden of proof to document that he has done so. Thus an employer must show that he has fairly and by reasonable means made a good faith effort to test the availability of qualified U. S. workers, and to recruit such workers who are willing to work at the prevailing wages and under the working conditions of the proposed job opportunity.

The Facts

On June 22, 1994 Orme filed its application here involved, seeking a goat herder. AF 32. The “Worker’s primary responsibility will be the feeding, grazing, care and protection of livestock, as needed.” AF 36. More specifically, the Job Specifications provided in pertinent part that the jobholder:

Item 11. Job Specifications

Attends herd of goats grazing on the range; Herds goats from corral to fresh pastures. Herds goats and rounds up strays using trained dogs. Guards herds from predatory animals and from eating poisonous plants. Drenches goats. May assist in kidding, castrating, and shearing. May feed goats supplementary feed.

AF 45.

On August 8, 1994 Orme reported "the results of our recruitment" to DOL, notifying the CO in relevant part that a U. S. applicant, Imara Crudup “was not hired. He did not have shearing experience.” No other objection to Mr. Crudup was stated AF 5.

The parties stipulated on August 24 that Mr. Crudup had been interviewed by Orme, that his “prior experience included farming and ranching, logging, carpentry, sheepherding, [and] apple and fruit picking,” and that he “was asked if he had any shearing experience and stated that he had worked on his family’s apple orchard in Maine where he had also herded sheep and had done some hand shearing a long time ago but had no experience with electric shears.” Stip., paras. 1, 2, 3.

Analysis and Decision

It is well settled that Employer, seeking the benefit of a special provision of the Immigration and Nationality Act under which a foreign worker is to be certified to take a job within the United States for which a U. S. worker has applied, has the burden of proof on an appeal from a Certifying Officer’s denial of certification. *Cathay Carpet Mill, Inc.*, 87-INA-161 (December 7, 1988, *en banc*).

The Employer has failed to carry that burden here. Its stated ground for rejecting Crudup, as far as the record before us shows, is simply incorrect as a matter of fact. And Employer has

not shown, on this record, that the experience in shearing that Crudup has had is insufficient for him to provide the “assist[ance] in . . . shearing” for which the need “May” arise. AF 45.

Since the CO rendered his denial of certification, the Employer has come forth with further information, which was not made available by the Employer to the CO before he issued his Final Determination of denial and was not a part of the record upon which the CO arrived at his decision. But we are strictly an appellate body; our decision must be based only OR the record on which the CO reached his decision, and .on arguments submitted in any brief or statement of position by the parties. “The administrative law judge [reviewing the case] shall not . . . receive additional evidence.” 20 C.F.R. 655.112(i)(1)(2).

The denial will, accordingly, be upheld.

ORDER

For the reasons stated, the denial of certification is affirmed.

Samuel B. Groner
Administrative Law Judge

SBG:gbs

Washington, D.C.