

**U.S. Department of Labor**

Office of Administrative Law Judges  
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**Issue Date: 24 February 2012**

*In the Matters of:*

**BARTON NURSERY,**

**OALJ Case No.: 2012-TLC-00027**  
ETA Case No.: C-12005-31296

**GIALANELLA EVERGREENS &  
NURSERY,**

**OALJ Case No.: 2012-TLC-00028**  
ETA Case No.: C-12006-31335

*Employers*

Certifying Officer: William L. Carlson  
Chicago National Processing Center

**ORDER OF REMAND**  
**FOR**  
**CONTINUED PROCESSING**

These matters arise under the temporary agricultural labor provisions of the Immigration and Nationality Act, 8 U.S.C. §§ 1101(a)(15)(H)(ii)(a) and 1184(c)(1), and the implementing regulations at 20 C.F.R. Part 655, Subpart B. On January 11, 2012, and January 13, 2012, the Certifying Officer (“CO”) issued *Notices of Deficiency* (“NODs”) to Barton Nursery and Gialanella Evergreens & Nursery (“the Employers”), finding that their three-month experience requirement was not consistent with the normal and accepted qualifications required by non-H-2A employers in the same or comparable occupation or crop, as required by 20 C.F.R. § 655.122(b). The Employers appealed the NODs to the Office of Administrative Law Judges (“OALJ” or “Office”), and on February 15 – 16, 2012, I conducted a telephonic hearing in these matters pursuant to 20 C.F.R. § 655.171(b).

Subsequently, on February 22, 2012, counsel for the CO notified this Office that the CO had agreed to accept the Employers’ applications with the three-month experience requirement, and therefore requested that these matters be remanded to the Chicago National Processing

Center (“CNPC”) for further processing. Counsel for the CO stated that the Employers’ attorney has no objection to this request.

Based on the foregoing, it is hereby **ORDERED** that these matters are **REMANDED** to the CNPC for further processing.

A

**WILLIAM S. COLWELL**

Associate Chief Administrative Law Judge