

U.S. Department of Labor

Office of Administrative Law Judges
800 K Street, NW, Suite 400-N
Washington, DC 20001-8002

(202) 693-7300
(202) 693-7365 (FAX)



Issue Date: 02 November 2012

Case No.: **2013-TLC-00003**
ETA Case Nos.: C-12251-35551

In the Matter of:

SEINEPRO, INC.,
Employer.

ORDER OF DISMISSAL WITHOUT PREJUDICE

On October 15, 2012, I issued a Notice of Assignment and Order in the instant case, which arises under the temporary agricultural labor or services provision of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(ii)(a) and its implementing regulations found at 20 C.F.R. Part 655 Subpart B. It involves an October 3, 2012 request for “an expedited administrative review of the denial or a de novo hearing if the review does not resolve the matter.” However, as I noted in the Order, the regulations do not provide for a serial use of the appeals processes but, rather, provide for alternative remedies of expedited administrative review or a de novo hearing, and as a decision issued by an administrative law judge based on either remedy is the final decision of the Secretary of Labor, the remedies must be exclusive. *See* 20 C.F.R. §655.164, 655.171. I further advised the parties that I would be considering the case as an expedited administrative review absent further action by the Employer. The administrative file was received on October 16, 2012, and I allowed the parties three business days upon receipt to submit any briefing. *See* 20 C.F.R. §655.171(a).

Employer’s brief was timely filed by email. However, Employer included evidence with its brief, which is not permitted for expedited review cases. Accordingly, I set up a conference call between the parties, which was held on October 25, 2012. At the conference call, the various options available to the parties were discussed, and it was agreed that this matter would be remanded for consideration of the ETA Form 9142 submitted on appeal, with the date of submission deemed to be October 25, 2012. Counsel for the Certifying Officer agreed to draft a remand order on behalf of both parties and to submit an agreed upon draft to this tribunal. However, by email of October 26, 2012, counsel for the Certifying Officer submitted a Stipulation of Dismissal instead of a draft remand order, and the terms are different from those agreed upon at the conference. Inasmuch as the parties have agreed, in order to avoid further delay, I will accept the dismissal stipulation; however, the dismissal will be without prejudice. In other words, in the event that matters do not proceed as contemplated before the Certifying Officer (CO), Employer may reinstate proceedings before this tribunal. Accordingly, as agreed by the parties, this case is dismissed on the following terms:

1. The dismissal of this proceeding will enable SeinePro, Inc. to either, at its election, obtain CO review of the ETA Form 9142 that SeinePro submitted on October 9, 2012, or to submit a new ETA Form 9142 with additional supporting documentation.
2. The date of need for the requested workers will be 45 days from the date that SeinePro either elects to have the CO process its October 9, 2012 submission or submits a new application.

Accordingly,

ORDER

IT IS HEREBY ORDERED that the above-captioned case be, and hereby is **DISMISSED WITHOUT PREJUDICE**.

PAMELA J. LAKES
Administrative Law Judge