



In the Matter of

VIRGINIA AGRICULTURAL
GROWERS ASSOCIATION, INC.

Case No. 85-TAE-1

DECISION AND ORDER

This case arises under the regulations governing the Labor Certification Process for the Temporary Employment of Aliens in Agricultural and Logging Employment, 20 C.F.R. 655, Subpart C., hereinafter referred to as the regulations, promulgated pursuant to the Immigration and Nationality Act, 8 U.S.C. §1101, 1184(C). The complainant, hereinafter referred to as VAGA, has requested administrative judicial review of the denial of his application for temporary labor certification.

On, March 5, 1985, the Regional Administrator of the Employment and Training Administration notified VAGA that they would not be eligible to apply for temporary labor certification of agricultural workers in 1985 because of a 1983 violation by VAGA and one grower member, James Williamson, of 20 C.F.R. §655,203(b)(2)(ii) of the Regulations. The violation arose as a result of Williamson's failure in 1983 to provide insurance coverage, at no cost to the worker, with benefits at least equal to those provided under the State workers' compensation law for comparable employment. Williamson's 1983 insurance policy provided no coverage for loss of wages. The lack of proper insurance coverage was discovered when an employee of Williamson's, Jose Maria Rodriguez-Salas, complained of back pains on or about July 31, 1983 which he latter alleged arose out of an injury stained during his employment with Williamson. After rejecting a settlement offer, Rodriguez-Salas pursued his claim before the Virginia State Industrial Commission naming VAGA and Williamson as party defendants. The Commission dismissed the charges finding that VAGA was not an employer within the meaning of the Act and that Williamson was not covered by the State statute. The Commission also noted that Rodriguez-Salas claim that he sustained a work-related injury was "highly suspect." Following dismissal of his claim by the Commission in October 1984, Rodriguez-Salas has taken no further steps to pursue his claim.

Despite the violation of the regulations in 1983, VAGA's labor certification for the 1984 growing season was granted on June 19, 1984 by the Regional Administrator. Certification was predicated on an assurance by VAGA that each grower member had the required insurance coverage. VAGA submitted an affidavit stating that the proper insurance coverage was provided and an onsite investigation by a task force of National and Regional Department of Labor staff on July 16-20, 1984 documented that all grower members employing H-2 workers had adequate insurance coverage in 1984.

The Regional Administrator re-affirmed his decision to grant certification for the 1984 season in a memorandum dated December 28, 1984 submitted in response to an administrative complaint filed by two migrant farm workers to enjoin the grant of labor certification for 1984. The Administrator indicated in his memorandum that the violation arising from the lack of proper insurance coverage was an isolated instance that had no adverse effect on similarly situated U.S. workers and that this violation did not warrant imposition of the ineligibility sanction. The Administrator did indicate however, that VAGA should attempt to resolve the Rodriguez-Salas claim by either settling his claim or reaching an agreement to submit the claim to an impartial arbitrator and that the failure to take such action would jeopardize VAGA's 1985 labor certification.

Attempts to settle the Rodriguez-Salas claim failed and as a result the Regional Administrator denied labor certification to VAGA for the 1985 growing season. Administrator noted that VAGA's In his decision the Regional "refusal to take any further action regarding Rodriguez-Salas's claim, indicates to me that you will take no action to cure an outstanding violation of the Regulations on the part of one of your grower members." He concluded, thus, that the ineligibility provision of 20 C.F.R. §655.210 was the only sanction available to him.

I reverse the Regional Administrators decision and find that he has exceeded his power in attempting to interject himself in matters that are clearly outside his authority. Failure of VAGA or Williamson to compensate Rodriguez-Salas for his loss of wages during the 1983 growing season because of an alleged work-related injury is not in and of itself a violation of the regulations which would give rise to denial of labor certification. There has been no determination that Rodriguez-Salas sustained a compensable injury arising out of and in the course of his employment with Williamson. It is Rodriguez-Salas' burden to pursue his claim in the appropriate forum. In the absence of such a determination, the Regional Administrator has no authority to conclude that Rodriguez-Salas was entitled to compensation.

The only violation which could trigger the ineligibility provisions, one not cited by the Regional Administrator, was the failure of VAGA or its member-growers to have adequate insurance coverage during the 1983 growing season. The Regional Administrator previously found this violation to be unintentional and one that had no adverse effect on the wages and working conditions of U.S. workers when he granted labor certification for the 1984 growing season.

ORDER

The decision of the Regional Administrator denying labor certification is reversed.

CHARLES P. RIPPEY
Administrative Law Judge

Dated: 17APR 1986
Washington, D.C.