



Date: November 13, 1998

Case No.: **1999-TAE-001**

In the Matter of:

MIKE LANGLEY GROVE, INC.

Respondent,

BEFORE: John M. Vittone
Chief Administrative Law Judge

ORDER OF DISMISSAL

On **November 2, 1998**, the Respondent in the above-captioned matter filed a *Request for Expedited Administrative Judicial Review*. Pursuant to the provisions at 20 C.F.R. § 655.104, the Regional Administrator of the Department of Labor, Employment and Training Administration (“RA”), issued a determination letter on **August 21, 1998** finding that Respondent’s modified application for temporary alien labor certification failed to meet the requirements of 20 C.F.R. §§ 655.101-103. The RA’s determination letter stated that the application was being returned to Respondent. Respondent, as provided for at 20 C.F.R. § 655.104(c), was informed of the opportunity to request an expedited administration judicial review or a de novo hearing before the Office of Administrative Law Judges, U.S. DOL, “within **seven calendar days** of the date of [the] notice of nonacceptance. . .” (bold added). Alternatively, Respondent was given the option of resubmitting a modified application to the RA within five days of the same date -- specifically, by August 26, 1998.¹ In the event that such requests were not timely made, Respondent was informed that no further consideration of the application would be made by any Department of Labor official.

¹In accordance with 20 C.F.R. § 655.105(c), the RA notified the applicant (Respondent) of the rejection in writing within seven calendar days of the date the application was received. Pursuant to section 655.105(c), the RA was required to notify the applicant “by means normally assuring next-day delivery.” In this case, the RA sent the determination letter on **Friday, August 21, 1998**, by Federal Express Standard Overnight (Next Business Afternoon). The applicant did not receive the letter until **Monday, August 24, 1998**. While I have no authority to review the RA’s failure to consider Respondent’s modified application (which was certifiably mailed on August 27, 1998), it remains troublesome to me that the RA considers mailing a letter on a Friday via Federal Express Standard Overnight (**Next Business Afternoon**) to constitute a “means normally assuring next-day delivery.” It is obvious that a letter sent out on Friday (via Fed Ex) would not arrive until the following Monday – the next business day.

As Respondent's *request for a hearing* was not filed within the required **seven day period** (20 C.F.R. § 655.105(3)), it is unfortunate that this Office is without jurisdiction to review the RA's determination.

Accordingly, this matter is **HEREBY DISMISSED**.

SO ORDERED.

JOHN M. VITTON
Chief Administrative Law Judge

JMV/pmb