

THE LAW OFFICES OF  
ROBERT J. WILLIS

Robert J. Willis

Please Reply To:

P.O. Box 1269  
Raleigh, NC 27602  
Phone: (919) 821-9031  
Facsimile: (919) 821-1763

P.O. Box 1828  
Pittsboro, NC 27312  
Phone: (919) 542-1825  
Facsimile: (919) 542-7326

July 14, 2008

Ms. Charlene Giles  
Ms. Maria Christine Gonzales  
Ms. Lynette Wills  
United States Department of Labor  
Employment & Training Administration,  
Chicago National Processing Center,  
844 North Rush Street, 12<sup>th</sup> Floor  
Chicago, Illinois 60611

Via Facsimile  
(312)886-1688

William L. Carlson, Ph.D.  
Certifying Officer  
Administrative Office of Foreign Labor Certification  
United States Department of Labor  
200 Constitution Avenue, N.W., Room C-4312  
Washington, D.C. 20210

Via Facsimile  
(202)693-2768

Re: NCGA--7-02-08 filings--rejections of job orders dated 7-09-08 (Case numbers C-08184-14118 and C-08184-14114)

Dear Certifying Officers Giles, Gonzales, and Wills and Dr. Carlson:

I am writing this letter in support of The North Carolina Grower's Association, Inc. ("NCGA") comments in support of the NCGA's proposed modification(s) and the United States Department of Labor's (DOL) withdrawal of the grounds for DOL's rejection of the above-referenced temporary alien agricultural labor certification applications under the H-2A program. As you may recall, in a three-way conversation with DOL's counsel, Vince Costantino, DOL agreed to allow NCGA and the Farm Labor Organizing Committee, AFL-CIO ("FLOC"), to submit to you via facsimile our comments in support of the acceptance by DOL of the amended Job Orders (as discussed below) and of the withdrawal of comments by DOL in their rejection letters of July 9, 2008 that would limit the ability of the NCGA to transfer FLOC members/workers among all certified grower grower members of the NCGA, a non-profit joint employer association, to work on all certified job opportunities that FLOC members desire to perform.

As FLOC's counsel of record, I have been authorized to submit the following comments in support of the NCGA's amended applications referenced above:

1. With respect to Area IV in the attachment to your rejection letter of July 9, 2008 for Case No. C-08184-14118 that is referenced above, as NCGA has explained in its letter to your office dated July 14, 2008, the grower members for whom certification is sought who do not list a specific number of workers will **share** workers with other certified members of NCGA who are specifically identified in the temporary alien agricultural labor certification application. For those growers who share workers, one of the growers involved provides the required housing for the FLOC members involved, and the FLOC members work for one or the other certified grower depending upon that particular grower's need for workers on any particular day. The reason for sharing is that the amount of work for any single grower is not sufficient to provide steady work on a daily basis but is sufficient to provide steady work on a daily basis when that work is made available by more than one grower.

In addition, over the last 10 years at least, the NCGA has listed and the DOL has approved temporary labor certification applications in which NCGA listed specific grower members in the way they are listed currently. Growers listed in this manner in the past have routinely been certified and have paid their fees to DOL-ETA as certified growers in the exact manner requested here. To request a specific number of workers for each of these growers would suggest a need for additional workers that overall they and the Association's joint employer growers do not need.

2. With respect to Area I in the attachments to your rejection letter of July 9, 2008 for both applications that are referenced above, FLOC supports the amendment to the certification application which provides for a separate disclosure statement and explanation as to those crops like asparagus that no NCGA grower member(s) listed in the application has committed to grow. With this separate disclosure statement which explains the contingent nature of the grower's commitment to grow a crop like asparagus (depending upon market conditions, weather, fuel costs, etc.), FLOC believes that if approved with this amendment there is no violation of 20 CFR § 655.102 nor will effective recruitment of US. Workers for the job opportunities involved in the above-referenced certification applications be negatively affected.

3. With respect to DOL's position in the July 9, 2008 rejection letters for the above-referenced certification applications that NCGA, as an association filing an application as a joint employer under 20 C.F.R. § 655.100(b)'s definition of "employer" with NCGA's grower members, is permitted to transfer workers **ONLY** between the employers listed on the particular application, and that DOL will treat any transfer between employers on different applications as a violation of the terms of the certification, FLOC makes the following comments in support of NCGA's position and response to the new interpretation by DOL:

A. All transfers that the NCGA may make among its grower members based upon its joint employer certification status and the Master Order materials previously submitted are for jobs that require (and offer) work in all phases of available diversified crops under what is known under the Department of Labor's Dictionary of Occupational Titles as "Farmworker, Diversified Crops," Code 407.687-010 and under the Department of Labor's O\*Net OnLine job titles and job content system as "Farmworkers and Laborers, Crop," Code 45-2092.02. Because the job descriptions are not inconsistent (as DOL-ETA has claimed), NCGA should be allowed to transfer workers for work with any NCGA grower member offering a certified employment opportunity as "Farmworker, Diversified Crops" based upon its status as a certified joint employer among all NCGA grower members .

B. NCGA, a non-profit, joint employer association that employs workers with its members, and its members, contrary to the restrictive comments in the 7-9-08 rejection letters that were never-raised-before at any time since the NCGA joint employer program began in 1989, should be able to continue transferring workers among its members to perform the certified job opportunities of any of its certified producer members.

C. As always in the past, NCGA and its members do not ask that workers may be transferred into any job opportunity that has not been certified as one eligible for employment of H-2A workers and as to which U.S. workers have certain rights as provided for in applicable regulations.

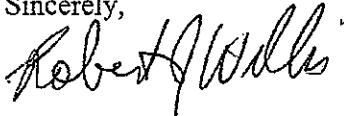
D. As always in the past, the NCGA and its members do not ask for any member to be able to employ H-2A workers until the respective farmer member has joined in a Job Order application process to receive approval that the member be able to use such workers as part of the joint employer association and has received such approval.

E. Continuing the ability of all H-2A workers lawfully eligible to work during the period in question on the farms of all then NCGA certified member growers, as work opportunities arise for workers based on the operational needs of NCGA's members, is lawful. Continuing this practice will best support, sustain, and develop work opportunities and increased income opportunities for both the U.S. workers and H-2A workers that FLOC represents based upon its collective bargaining agreement with the NCGA and its members. Continuing this ability is extremely important to support, sustain, and develop the economic viability of the NCGA and its grower members, and will thus protect future work and income opportunities for the workers that FLOC represents. What the NCGA, NCGA's members, and NCGA's employees represented by FLOC expect to continue to do is expressly authorized by 8 U.S.C. § 1188(d)(2) which reads as follows:

"If an association is a joint or sole employer of temporary agricultural workers, the certifications granted under this section [1188] to the association may be used for the certified job opportunities of any of its producer members and such workers may be transferred among its producer members to perform agricultural services of a temporary or seasonal nature for which the certifications were granted."

In closing, FLOC requests that DOL recognize that the comments of FLOC and its position in support of the NCGA with respect to all matters that are the subject of this letter are based upon FLOC's careful consideration of its duty under the CBA to pursue the best interests of all workers, U.S. workers and Mexican nationals who may receive H-2A visas under the temporary labor certification applications involved, that FLOC represents under that CBA.

Sincerely,



Robert J. Willis  
Attorney at Law  
FLOC Counsel, North Carolina

cc: Vincent Costantino, Esquire (Via E-Mail - Costantino.Vincent@dol.gov)  
Harry Sheinfeld, Esquire (Via E-Mail - Sheinfeld.Harry@dol.gov)  
Mr. Lee Wicker (NCGA) (Via E-Mail - LWicker@ncgrowers.org)  
Ann Margaret Pointer, Esquire (Via E-Mail - APointer@laborlawyers.com)  
Shanon R. Stevenson, Esquire (Via E-Mail - SStevenson@laborlawyers.com)