



DATE: SEP 14 1995

CASE NOS. 94-MSP-18  
94-MSP-20

In the Matter of

ROBERT L. REICH, SECRETARY OF LABOR  
U.S. DEPARTMENT OF LABOR

Plaintiff

v.

ABEL SANTIAGO

and

HARLOFF FARMS OF EAST TENNESSEE, INC.  
ROGER HARLOFF, President

Respondents

### ORDER

On August 16, 1995, Theresa Ball, counsel for plaintiff, filed a motion to consolidate these cases for hearing on November 14, 1995. The Santiago matter is presently scheduled to be tried on that date in Knoxville, Tennessee. A copy of that Notice of Hearing and Pre-hearing Order is attached to this Order. In response to the motion, C. E. Bud Cunningham, counsel for Abel Santiago, responded on September 6, 1995 by advising that they have no objection to the consolidation of these cases for hearing. On September 13, 1995, Richard G. Groff, counsel for Harloff Farms and Roger Harloff, advised by facsimile transmission that they have no objection to the consolidation of these cases for hearing.

The procedural regulations found at 29 C.F.R. § 18.11 provide as follows:

Consolidation of hearings.

When two or more hearings are to be held, and the same or substantially similar

evidence is relevant and material to the matters at issue at each such hearing, the Chief Administrative Law Judge or the administrative law judge assigned may, upon motion by any party or on his or her own motion, order that a consolidated hearing be conducted. Where consolidated hearings are held, a single record of the proceedings may be made and the evidence introduced in one matter may be considered as introduced in the others, and a separate or joint decision shall be made, at the discretion of the administrative law judge as appropriate.

A review of the records of both of these cases indicates that there appears to be the same or substantially similar evidence relevant and material to matters at issue in both cases. Therefore, IT IS ORDERED that the plaintiff's motion to consolidate is hereby granted and these cases are consolidated for hearing and all other purposes.

All parties are once again reminded that these cases are scheduled to be called for hearing on November 14, 1995 in Knoxville, Tennessee. The Notice of Hearing and Pre-hearing order issued on July 26, 1995 provides the directives for discovery, the exchange of evidence and witness lists. All parties are expected to comply in all respects with the Pre-hearing Order.

A review of the formal record in Case No. 94-MSP-20 discloses that the respondent, Harloff Farms filed on March 3, 1995 a Motion to Strike or Exclude Evidence. Harloff Farms seeks to exclude as evidence in this case all of the INS Form I-263(b) Record of Sworn Statements and also the INS Form I-213, Records of Deportable Alien. The documents consist of the reports of twelve Immigration and Naturalization Service Agents relating to their interviews of forty-three aliens.

These documents were apparently provided to the respondents as a result of the prior issuance of a Notice of Docketing and Pre-hearing Order at the time that this case was referred to the Office of Administrative Law Judges for hearing. The Notice of Docketing and Pre-hearing Order was issued approximately one year ago and prior to the time that any of the parties had an opportunity to prepare this case for trial. Therefore, it is not known whether the Department of Labor will attempt to introduce any or all of the documents included as a part of its prior Notice of Docketing response. Therefore, I believe that the respondents' Motion to Strike or Exclude Evidence with respect to the INS materials is premature pending a complete and exact response to my Pre-hearing Order which was issued as a part of the Notice of Hearing in this case.

Therefore, IT IS ORDERED that the Harloff Farms' Motion to Strike or Exclude Evidence is hereby denied. The Motion may be renewed within five days from the date of receipt of the pre-hearing exchange materials all as noted at Item 3 in my Pre-hearing order.

The Department of Labor Rules of Evidence are effective only where the investigation by the Department of Labor agents commenced thirty days following April 9, 1991. The parties to this proceeding are hereby ordered to immediately stipulate by way of a written stipulation signed by

counsel for all parties, the exact date that the investigation commenced in these cases. That written stipulation should be submitted within fifteen days from the date of this order.

Rudolf L. Jansen  
Administrative Law Judge

Attachment: Notice of Hearing and Pre-hearing Order