

SLIP OP. 07-89
UNITED STATES COURT OF INTERNATIONAL TRADE

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DURFEY, et. al           :
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                          :
          Plaintiffs,    :
                          :
          v.              :
                          :
                          :
          UNITED STATES SEC'Y :
          OF AGRICULTURE,   :
                          :
          Defendant.      :
-----X

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Before: Pogue, Judge
Court No. 06-00316

[Defendant's motion for Judgment on the Agency record granted.]

Dated: June 5, 2007.

Akin Gump Strauss Hauer & Feld LLP (Spencer Stewart Griffith,
Bernd G. Janzen, Bryce V. Bittner) for the Plaintiffs Ted Durfey,
Pam Durfey.

Peter D. Keisler, Assistant Attorney General; Jeanne E. Davidson,
Director, Patricia M. McCarthy, Assistant Director, Commercial
Litigation Branch, Civil Division, U.S. Department of Justice
(Delisa M. Sanchez); Jeffrey Kahn, Attorney, Office of the General
Counsel, Department of Agriculture (of Counsel) for Defendant
United States Secretary of Agriculture.

OPINION AND ORDER

Pogue, Judge: Plaintiffs, Ted and Pam Durfey, initiated this action on September 22, 2006, by filing a complaint seeking review of the United States Department of Agriculture's ("USDA") denial of Plaintiffs' application for Trade Adjustment Assistance ("TAA"). Defendant, the USDA, responded by filing a USCIT R. 12(b)(1) motion, seeking to dismiss the case for lack of subject matter jurisdiction, claiming that a final determination had yet to be

issued by the USDA regarding the denial (or approval) of benefits. The USDA subsequently did issue a final determination denying the Durfeys' application, at which point Defendant filed a USCIT R. 12(b)(5) motion, requesting that the action be dismissed due to Plaintiffs' failure to state a claim upon which relief could be granted.

The court determined that the issues raised by Defendant's USCIT R. 12(b)(5) motion would require it to examine matters outside the pleadings; therefore, and pursuant to the court's authority under USCIT R. 12(b), on February 7, 2007, the court converted Defendant's motion to a USCIT R. 56.1 motion for judgment upon the agency record, and invited the parties to file briefs or comments by March 7, 2007. Defendant, on March 7, 2007, submitted a subsequent USCIT R. 56.1 motion for judgment on the agency record. The court has awaited Plaintiffs' response to either its letter of February 7, 2007 or to Defendant's motion of March 7, 2007. On May 10, 2007, Plaintiffs, who hitherto had been proceeding pro se, obtained counsel who filed an appearance in this case.

As of today's date, Plaintiffs have not filed any response to the Defendant's USCIT R. 56.1 motion. Therefore, the court will treat the Defendant's motion as uncontested. Accordingly, the court affirms the determination of the USDA denying Mr. and Mrs. Durfey's TAA applications, and will enter judgment for the

Defendant.

SO ORDERED.

Dated: June 5, 2007
New York, N.Y.

 /s/
Donald C. Pogue, Judge

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OF AGRICULTURE,         :
                          :
          Defendant.    :
-----X

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Judgment

This action has been duly submitted for decision, and this Court, after due deliberation, has rendered a decision herein; now, in conformity with that decision, it is hereby

ORDERED that the United States Department of Agriculture's motion for Judgment on the Agency Record is granted; and it is further

ORDERED that this action is dismissed.

_____/s/
Donald C. Pogue
Judge

Dated: June 5, 2007
 New York, New York