

**UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE**

Docket No. 14-0027

In re:

KRIEGEL INC., and
LAURANCE KRIEGEL,

Petitioners.

DECISION AND ORDER DISMISSING PETITION FOR APPEAL

The instant matter involves a petition filed by Laurance Kriegel and Kriegel, Inc. (“Petitioners”) with the Hearing Clerk for the United States Department of Agriculture’s Office of Administrative Law Judges (“OALJ”), requesting review of the decision of the Administrator for the Agricultural Marketing Service (“AMS”) regarding organic certification.

PROCEDURAL HISTORY

On April 2, 2013, the Texas Department of Agriculture (“TDA”)¹ denied Petitioners’ application for organic certification. On April 6, 2013, Petitioners requested that TDA participate in mediation regarding the denial of certification, but TDA rejected the request on April 28, 2013. On May 2, 2013, Petitioners appealed the denial of their application to the National Organic Program (“NOP”), administered by AMS, pursuant to 7 C.F.R. § 205.681(a). By letter dated May 13, 2013, NOP accepted Petitioners’ appeal. On October 22, 2014, the AMS Administrator denied Petitioners’ appeal.

On November 5, 2013, Petitioners filed a pleading with the Hearing Clerk for the United States Department of Agriculture’s Office of Administrative Law Judges (“OALJ”), requesting review of the denial of their appeal by AMS. On December 4, 2013, counsel for USDA filed an agency response which included a motion to dismiss Petitioners’ request, on the grounds that the matter was not ripe for adjudication.

¹ TDA is an accredited certifying agent of the USDA NOP.

DISCUSSION

The Secretary has delegated authority to OALJ to hold hearings and proceedings subject to 5 U.S.C. §§ 556 and 557, arising under statutes enumeration at 7 C.F.R. § 1.131. See, 7 C.F.R. §2.27(a)(1).

7 C.F.R. § 205.681 sets forth the procedure to appeal a denial of certification as an organic producer. Section 205.681(a)(2) states that “[i]f the Administrator or State organic program denies an appeal, a formal administrative proceeding will be initiated to deny, suspend, or revoke the certification. Such proceeding shall be conducted pursuant to the U.S. Department of Agriculture's Uniform Rules of Practice or the State organic program’s rules of procedure.” 7 C.F.R. § 205.681(a)(2).

Although OALJ may eventually consider Petitioners’ arguments, the instant appeal is not provided for by prevailing regulations. Petitioners’ case is not yet ripe to be heard, as no formal administrative proceeding has been initiated by USDA to deny, suspend, or revoke Petitioners’ organic certification. Accordingly, OALJ has no authority to review Petitioners’ claims and the instant matter must be DISMISSED.

ORDER

For the reasons set forth herein, Petitioners’ petition for appeal is DENIED and the instant cause of action is hereby DISMISSED, with prejudice.

This Decision shall be final and effective thirty-five (35) days after service, unless an appeal to the Judicial Officer is filed with the Hearing Clerk within thirty (30) days after service. The Hearing Clerk shall serve copies of this Order upon Petitioners and Respondent’s counsel.

So ORDERED this 17th day of January, 2014, at Washington, D.C.

Janice K. Bullard
Administrative Law Judge

