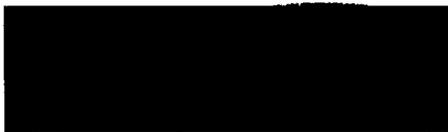


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and Immigration
Services**

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: **FEB 23 2005**

IN RE:

Applicant:



APPLICATION: Application for Status as a Temporary Resident pursuant to Section 210 of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1160

ON BEHALF OF APPLICANT:

Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, you no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application for temporary resident status as a special agricultural worker was denied by the District Director, San Francisco, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained.

The district director denied the application because the applicant purportedly submitted evidence that related to his father rather than himself.

On appeal, the applicant provides an affidavit from the agricultural employer, who reiterates that the applicant had indeed worked for him.

In order to be eligible for temporary resident status as a special agricultural worker, an alien must have engaged in qualifying agricultural employment for at least 90 man-days during the twelve-month period ending May 1, 1986, provided he is otherwise admissible under section 210(c) of the Act and is not ineligible under 8 C.F.R. § 210.3(d). 8 C.F.R. § 210.3(a). An applicant has the burden of proving the above by a preponderance of the evidence. 8 C.F.R. § 210.3(b).

On the application, Form I-700, the applicant claimed to have picked fruit for over 90 days for [REDACTED] from May 1985 to May 1986. In support of his claim, the applicant submitted a Form I-705 affidavit from [REDACTED] who indicated that he was a farm labor contractor, and that the applicant had worked for him at numerous orchards for 96 days from May 1, 1985 through September 30, 1985.

The district director denied the application, stating that, at his interview, the applicant signed a sworn statement in which he indicated that the affidavit belonged to his father rather than him. The director also stated that the applicant admitted that he had never been employed by [REDACTED]. It is noted that, in the statement, the applicant did not mention either [REDACTED] by name.

[REDACTED] provide statements on appeal. [REDACTED] explains that the applicant's father was working for him when the father and the applicant applied for special agricultural worker status in 1988. When the applicant's father concluded that he would not be able to find [REDACTED] time in order to obtain his true employment verification [REDACTED] gave him phony evidence as a favor, showing that the applicant's father had worked for him. [REDACTED] apologizes for his actions, and the applicant expresses regret that both his father's application and his were denied as a result.

In the other statement provided on appeal, [REDACTED] swears that the applicant and his father did work for him as claimed. He explains that he always paid the father for both of their work. He states that he cannot be sure that the applicant worked all day or just a few hours.

The term *man-day* means the performance during any day of not less than one hour of qualifying agricultural employment for wages paid. 8 C.F.R. § 210.1(j). Thus, the fact that the applicant may have only worked a few hours some days does not mean that those days cannot be counted as "man-days".

Analysis of evidence submitted will include consideration of the fact that work performed by minors and spouses is sometimes credited to a principal member of a family. 8 C.F.R. § 210.3(b)(2). Although Mr.

chose to credit the applicant's wages to the applicant's father, the fact remains that the applicant performed agricultural duties and must receive credit for such work.

There is no evidence in this record that the applicant falsely claimed to have worked for [REDACTED]. In the absence of evidence to the contrary, it is concluded that the applicant has provided sufficient evidence of having worked at least 90 man-days in qualifying employment for [REDACTED] during the requisite period.

ORDER: The appeal is sustained