

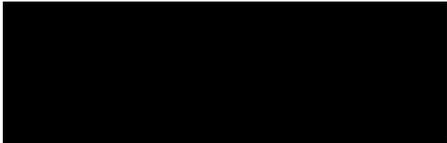
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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536



AUG 14 2003

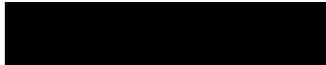
FILE:



OFFICE: Texas Service Center

DATE:

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:



INSTRUCTIONS:

Attached is the decision rendered on your appeal. The file has been returned to the Service Center which processed your case. If your appeal was sustained, or if your case was remanded for further action, the Service Center will contact you. 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.

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, Harlingen, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director denied the application because the applicant failed to establish the performance of at least 90 man-days of qualifying agricultural employment during the statutory period.

On appeal, the applicant states that the individual who assisted him in preparing his application package mistakenly completed an application for temporary residence as a special agricultural worker under section 210 of the Act. The applicant indicates that he and the preparer are attempting to correct this mistake by submitting an application for temporary residence under the general legalization program on Form I-687 with his appeal. The applicant contends that he is eligible for temporary resident status under the general legalization program because he has lived in the United States since 1980. He points out he has an American son and an "American Alien" common-law wife (presumably a lawful permanent resident) and indicates that their decision to marry depends on the outcome of the appeal. The applicant includes a statement from the preparer of these applications, and documentation to support his claim of continuous residence in the United States since prior to January 1, 1982.

The record shows that the applicant subsequently retained legal counsel, and that counsel submits further documentation to explain the circumstances which led the applicant to incorrectly file an application for special agricultural status.

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).

Pursuant to section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2), an applicant for temporary residence under the general legalization program must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and through the date the application is filed.

Congress provided an 18-month application period for those seeking benefits under the special agricultural worker program. Section 210(a)(1) of the Act. This designated eligibility period extended from June 1, 1987, to November 30, 1988. Congress also provided a 12-month application period for those seeking benefits under the

general legalization program. Section 245A(a)(1)(A) of the Act. This designated eligibility period extended from May 5, 1987, to May 4, 1988.

The applicant filed a Form I-700 application for temporary resident status as a special agricultural worker under section 210 of the Act on December 4, 1987. On the Form I-700 application, the applicant claimed to have performed 148 man-days hoeing squash and onions for Mayeda Farms from June 30, 1986 to October 1987, and 133 man-days picking tomatoes for Duda & Sons, Inc., from October 1986 to May 1987. In support of these claims of employment, the applicant included employment letters, photocopies of pages from a payroll ledger, and original time sheets.

The applicant appeared for his scheduled special agricultural worker interview on December 4, 1987. On the Form I-696, Interview Worksheet, the interviewing officer indicated that the applicant's evidence was insufficient to establish that he was eligible for special agricultural status under Section 210 of the Act. It is apparent the officer concluded the applicant was statutorily ineligible because he had not worked in agriculture from May 1, 1985 to May 1, 1986. Therefore, the district director issued a denial of the application for special agricultural worker status to the applicant on December 4, 1987.

The applicant has not provided evidence of having engaged in qualifying agricultural employment during the twelve-month period ending on May 1, 1986. Therefore, the director's decision denying that benefit must be affirmed.

On appeal, the applicant declares that he is eligible for temporary resident status under the general legalization program because he has continuously resided in this country since December 1980. The applicant submits documentation to support his claim of continuous residence in the United States since January 1, 1982. The applicant states that the individual who assisted him in preparing his application package mistakenly completed an application for temporary residence as a special agricultural worker under section 210 of the Act. The applicant indicates that he and the preparer are attempting to rectify this mistake by submitting an application for temporary residence under the general legalization program on Form I-687 with his appeal. The applicant includes a statement from the preparer of these applications that corroborates the claim put forth on appeal.

Congress provided a twelve-month application period for those seeking benefits under the general legalization program. See Section 245A of the Act. *An application for benefits under section 245A must have been properly filed on Form I-687 within that period at a local legalization office or a qualified designated entity.*

See 8 C.F.R. 245a.2(e). The applicant did not do so, although he did provide Form I-687 (without fee) as part of his appeal to the Administrative Appeals Office.

If an alien, with his initial *agricultural* application, had submitted documents which made clear that he was actually attempting to obtain amnesty through the *general legalization program*, it would have been unfair for the Service to have not promptly advised him at his interview that he had filed the wrong application. We have held in such cases that the failure to inform the alien in such a situation amounts to significant error on the part of the Bureau. However, the facts of this case are quite different. The applicant applied for special agricultural worker status, and his application, which was supported only by documentation relating to an agricultural claim, was promptly and properly denied at his interview at his local legalization office. When the applicant received the denial notice, he had five months in which to seek assistance from the local legalization office or qualified designated entity concerning the proper filing of a legalization application. The applicant did not take advantage of that opportunity.

Given the lack of evidence that the Bureau misguided the applicant or otherwise erred in these proceedings, it is concluded that the applicant's failure to have properly filed a legalization application cannot be overcome by his submission of the legalization application on appeal. Therefore, his appeal will not be considered under the general legalization provisions of section 245a of the Act.

Even if the applicant had properly submitted an application for legalization which was now under consideration, he would not be found to have submitted sufficient evidence of continuous residence from prior to January 1, 1982 through 1985. He has provided only two affidavits attesting to his residence during that period, and only one refers to residence *prior* to 1985. The extremely minimal evidence, and the absolute lack of contemporaneous documentation, would lead to a conclusion that the applicant had not demonstrated that he had resided continuously in the United States throughout the requisite period.

The applicant is statutorily ineligible for temporary residence as a special agricultural worker under section 210 of the Act. His appeal will not be considered under the general legalization provisions of section 245a of the Act.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.