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JUN 01 2012

FILE:



Office: NEBRASKA 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:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the service center that processed 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.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application for temporary resident status as a special agricultural worker was denied by the Director, Northern Regional Processing Facility. The matter is now before the Administrative Appeals Office on appeal. The appeal will be sustained.

The facility director found that [REDACTED] had not worked at Kansas City Produce (KCP) as supervisors as claimed, and therefore could not attest to anyone's employment there. The director concluded that the applicant, whose application was supported by affidavits from [REDACTED] had not worked at KCP.

In order to be eligible for temporary resident status under section 210 of the Act an alien must have engaged in qualifying agricultural employment for at least 90 days during the twelve-month period ending May 1, 1986. See 8 C.F.R. § 210.3(a).

In addition to affidavits from [REDACTED] attesting to the applicant's employment at KCP for approximately 110 days from May 1, 1985 to May 1, 1986, the applicant has furnished:

1. His own affidavit, dated March 22, 1991, explaining in detail the duties he performed for KCP from 1985 to 1986. He indicated that he worked full-time from early April to August 16, 1985, and then part-time from August 16 to mid-October. He further indicated he worked two days a week for the entire 1986 growing season. He explained that his crew leaders were [REDACTED] and [REDACTED] also worked there as crew leaders, and finally that James Stafos was in charge of daily operations. In another affidavit from the applicant, dated February 2, 1996, he reiterated much of the same information and stressed that he was paid in cash each week;
2. Affidavits from the applicant's friend [REDACTED] and his uncle [REDACTED] corroborating his employment claim;
3. An affidavit dated May 4, 1995 from [REDACTED] Nurse Coordinator of the Migrant Health Program of the Kansas City/Wyandotte County Department of Health from 1978 to 1994, stating she knew [REDACTED] and six others as workers with supervisory responsibilities with KCP.;
4. An affidavit dated May 5, 1995 from Sister Matilda Jaime, Assistant Administrator of the non-profit organization El Centro, Inc., providing the same information about the supervisors as that furnished by [REDACTED] and stating that KCP was the primary employer of field workers in the Kansas City area;
5. An undated letter from [REDACTED] Area Director of Harvest America Corporation, another non-profit organization, explaining that she saw the applicant working at KCP in May 1985 for Antonio Rodriguez. In an affidavit dated May 3, 1995 she stated that from May 1, 1985 to May 1, 1986 she conducted outreach services from one to three days a week at KCP during the farming season and became acquainted with the applicant there. In an additional affidavit also dated May 3, 1995, she described in detail her duties for Harvest America, Inc., and stated that James Stafos continued to work at KCP even after he sold the business to [REDACTED]. She also stated that she did not recall ever seeing [REDACTED] in the fields, and that the primary KCP payroll procedure was to pay the field workers their wages in cash. Also furnished was an affidavit dated May 3, 1995 from [REDACTED] Executive Director of Harvest America, Inc., supporting the affidavits of her employee [REDACTED].

6. A March 25, 1991 affidavit from [REDACTED] explaining that he had worked as a crew leader for 30 years for the enterprise known variously as Stafos Farm, Muncie Farms and KCP, and corroborating the applicant's claimed employment there between May 1985 and May 1986. He also specified that the applicant worked full-time until August 1985, and part-time thereafter. [REDACTED] reiterated the same information in another affidavit dated May 3, 1995, and added that he specifically remembered the applicant by his nickname;
7. An affidavit from farmer [REDACTED] explaining that in 1985 he contracted with KCP to plant and harvest corn on his acreage, and that [REDACTED] and his crew leaders, [REDACTED] supervised the efforts;
8. Three affidavits from farmer [REDACTED] stating he had been introduced to [REDACTED] by [REDACTED] who referred to [REDACTED] as his General Manager. He further stated he had been introduced to [REDACTED] by [REDACTED] who referred to them as field foremen who would supervise the work of [REDACTED] acreage;
9. A six-page overview written by counsel entitled "The Business Structure of Kansas City Produce, Inc.," stating among other things that:
  - a. In 1984 [REDACTED] sold his farm to [REDACTED] who renamed it Kansas City Produce;
  - b. The enterprise consisted of about 1600 acres, either owned by KCP or owned by private farmers who contracted with KCP;
  - c. Crew leaders such as [REDACTED] well as field workers, remained unchanged at the time of the ownership change;
  - d. [REDACTED] conducted the payroll operation and issued large checks to the crew leaders who then dispersed cash to the workers;
  - e. There were an estimated 600-1000 field workers at KCP during the 1985 season; [REDACTED] remained with the business after he sold it; [REDACTED] acknowledged, in a sworn statement, that [REDACTED] had worked for him at KCP.

In support of the overview, counsel provided transcripts of court testimony by various individuals in the case of *United States of America vs Isuara Rocha a/k/a/ Isuara Galvan*, Criminal Action No. 91-20043-012. Sheldon Singer, attorney for the trustee in a bankruptcy action filed by KCP in 1985, stated that he believed a number of employees were paid in cash and had no idea whether the payroll ledger contained the names of all of the KCP employees. [REDACTED] testified that the payroll account for the field workers was separate from the payroll account for the KCP warehouse workers. He also testified that company records for field workers paid in cash were destroyed. [REDACTED] in a separate proceeding, testified that [REDACTED] and [REDACTED] worked for him at KCP.

The facility director, in denying the application, indicated that [REDACTED] the owner of KCP, had stated that [REDACTED] had not worked for KCP in 1985-86. The director relied on an investigative report that indicated that [REDACTED] had stated that, *to the best of his knowledge*, [REDACTED] never worked for KCP. By virtue of the fact that [REDACTED] qualified his alleged statement by saying "to the best of my knowledge," it must be concluded that he was not sure. Indeed, numerous individuals have stated or officially testified in court that, although [REDACTED] sold the farming operation to [REDACTED] stayed on and directed many of the activities, and that [REDACTED] was not fully aware of all that was going on in that very large operation for the short time that he owned it before KCP filed for bankruptcy. At any rate, [REDACTED] did testify, in a separate proceeding, that [REDACTED] had worked for him at KCP.

The facility director also stated that the payroll records confirmed that [REDACTED] did not work for KCP. As noted above, there is doubt as to whether the payroll records the director reviewed included all of the field

workers. It appears that the regularly-employed warehouse workers at KCP were paid by check and the migrant workers who worked in the fields at KCP, and at the other farms that contracted with KCP, were paid in cash as claimed.

The extensive evidence establishes that both [REDACTED] held key positions at KCP during the qualifying period, and thus were in a position to attest to the employment of field workers there.

An alien applying for special agricultural worker status has the burden of proving by a preponderance of evidence that he or she worked the requisite number of man-days in qualifying employment. He or she may meet this burden by providing documentation sufficient to establish the requisite employment as a matter of just and reasonable inference. *See* 8 C.F.R. § 210.3(b).

Given the very extensive evidence provided by counsel, it is concluded that the applicant did work at KCP as claimed. The applicant has met his burden of proof.

**ORDER:** The appeal is sustained.