PUBLIC COPY

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

L4

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: MAY 25 2004

IN RE: Applicant: [redacted]

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:

[redacted]

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. A subsequent appeal was dismissed by the Director, Legalization Appeals Unit. The case is now reopened by the Administrative Appeals Office. The appeal will be sustained.

The facility director found tha[redacted] and [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 Mr[redacted] and Mr. [redacted] had not worked at KCP.

The Director, Legalization Appeals Unit, dismissed the appeal on the same basis.

Pursuant to 8 C.F.R. 103.5(b), the Administrative Appeals Office will *sua sponte* reopen or reconsider a decision under section 210 of the Immigration and Nationality Act (the Act) when it determines that manifest injustice would occur if the prior decision were permitted to stand. *Matter of O--*, 19 I&N Dec. 871 (Comm. Feb. 14, 1989)

The adverse information used in this proceeding, that [redacted] and [redacted] did not work at KCP, was not accurate. Therefore, the matter will be reopened.

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 the affidavits from [redacted] and James Stafos attesting to the applicant's employment at KCP for approximately 98 days from May 1, 1985 to May 1, 1986, the applicant has furnished:

1. His own affidavit, dated May 3, 1995, naming [redacted] as his crew leader at KCP, listing the crops he worked with for KCP from May to October 1985, and explaining that he was paid in cash every week;

2. An August 24, 1994 letter from Nancy Wynn, R.N., Nurse Coordinator in the Migrant Health Program of the Kansas City/Wyandotte County Department of Health from 1978 to 1994, explaining that in June 1985 the applicant was registered into the migrant worker program. This was accompanied by a printout that reflected the June 24, 1985 registration. In an affidavit dated May 3, 1995 Ms [redacted] iterated that information and stated that she remembered the applicant in particular from her visits to KCP because he was missing a few fingers. In a May 4, 1995 affidavit Ms. Wynn stated that she knew [redacted] nd six others as workers with supervisory responsibilities with KCP;

3. An affidavit dated May 5, 1995 from [redacted] Assistant Administrator of the non-profit organization El Centro, Inc., pointing out that between May 1, 1985 and September 1985 she made field visits to KCP and became acquainted with the applicant there. In a second affidavit, also dated May 5, 1995, [redacted] provided the same information about the supervisors as that furnished by Nancy Wynn and stated that KCP was the primary employer of field workers in the Kansas City area;

4. An affidavit dated May 3, 1995 from [redacted] Area Director of Harvest America Corporation, another non-profit organization, explaining 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. She also mentioned remembering him in particular because of the missing fingers from his left hand. In an additional affidavit also dated May 3, 1995, she described in detail her duties for Harvest America, Inc., and stated that continued to work at KCP even after he sold the business to She also stated that she did not recall ever seeing n 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 Laurie Rosenwasser, Executive Director of Harvest America, Inc., supporting the affidavits of her employee

5. A May 3, 1995 affidavit from 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 attesting to the applicant's employment there between May 1985 and May 1986. Mr stated in another affidavit dated February 10, 1994 that, although Tom Tanaka owned KCP for a short while, continued to essentially run it, an worked as crew leaders, and the workers were paid in cash.

6. An affidavit from farmer explaining that in 1985 he contracted with KCP to plant and harvest corn on his acreage, and that and his crew leaders nd supervised the efforts;

7. Three affidavits from farmer Robert Nehrbass, stating he had been introduced t by Tom Tanaka, who referred to Mr. as his General Manager. He further stated he had been introduced to Gilbert Rocha and Paul Ramirez by Mr. who referred to them as field foremen who would supervise the work of Mr. Nehrbass' acreage;

8. A six-page overview written by counsel entitled "The Business Structure of Kansas City Produce, Inc.," stating among other things that:

   a. In 1984 sold his farm to Tom Tanaka, 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 and as well as field workers, remained unchanged at the time of the ownership change;
   d. Paul Ramirez 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;
   f. remained with the business after he sold it;
   g. acknowledged, in a sworn statement, that and z 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 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. estified 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. Tom Tanaka, in a separate proceeding, testified tha and worked for him at KCP.

The facility director, in denying the application, indicated that the owner of KCP, had stated that had not worked for KCP in 1985-86. The director relied on an investigative report that indicated that M had stated that, *to the best of his knowledge*, M ever worked for KCP. By

virtue of the fact that Mr. 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 sold the farming operation to Mr Mr. stayed on and directed many of the activities, and that Mr. 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, Mr did testify, in a separate proceeding, tha had worked for him at KCP.

The facility director also stated that the payroll records confirmed that 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.

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 and did indeed work at KCP during the qualifying period, and that the applicant did work for Mr as claimed. The applicant has met his burden of proof.

ORDER: The decision of the Legalization Appeals Unit is withdrawn. The appeal is sustained.