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FILE:



Office: NEBRASKA SERVICE CENTER

Date: MAY 25 2004

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. 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 that [REDACTED] not worked at Kansas City Produce (KCP) as a supervisor as claimed, and therefore could not attest to anyone's employment there. The director concluded that the applicant, whose application was supported by an affidavit from 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] 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 original affidavit from [REDACTED] attesting to the applicant's employment at KCP for approximately 165 days from May 1, 1985 to April 30, 1986, the applicant has furnished:

1. His own affidavit, dated March 11, 1991, explaining in detail the duties he performed for KCP from 1984 to 1986, and how the workers were brought to various locations to work. He also noted that the visiting nurses from the Migrant Health Clinic of the Wyandotte County Health Department would perform medical services on location. In another affidavit from the applicant, dated May 4, 1995, he explained that his crew worked for [REDACTED] on farms throughout Lawrence, Perry, and Bonner Springs, and at Rancho Farmers and Muncie Farms, and that he was paid in cash by either [REDACTED] every eight days;
2. An affidavit from [REDACTED] the mother of his children, attesting to much the same and pointing out their baby was born on February 26, 1986 in Kansas City but died soon after. This affidavit was accompanied by the hospital birth certificate for their baby;
3. An affidavit from [REDACTED] attesting to the applicant and his wife having worked at KCP from 1984 to 1986 and having lived with him from June 1985 to March 1986;
4. An affidavit from [REDACTED] stating that he had worked part-time with the applicant at KCP from April to October in 1984, 1985 and 1986;
5. An April 1, 1991 letter from [REDACTED] Nurse Coordinator in the Migrant Health Program of the Kansas City/Wyandotte County Department of Health from 1978 to 1994, explaining her duties and pointing out that she saw the applicant in June 1985 in the migrant clinic and again one year later. In an affidavit dated May 3, 1995 Nancy Wynn again attested to the nursing services she performed and reiterated that the applicant and his wife had worked at KCP. In another affidavit dated May 4, 1995 Ms [REDACTED] stated she knew [REDACTED]

[redacted] and six others as workers with supervisory responsibilities with KCP. Also included was a statement from [redacted] Coordinator of Medical Records at the same health department, pointing out that the applicant was seen and treated eight times from July 11, 1985 to June 25, 1986. Actual records of the applicant's treatment by Ms [redacted] and other nurses in 1985 and 1986 were also furnished;

6. 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 [redacted] and stated that KCP was the primary employer of field workers in the Kansas City area;
7. 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. 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 Tom Tanaka. She also stated that she did not recall ever seeing Tom Tanaka 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];
8. A May 3, 1995 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 attesting to the applicant's employment there between May 1985 and May 1986. Mr. [redacted] stated in another affidavit dated February 10, 1994 that, although [redacted] owned KCP for a short while, [redacted] continued to essentially run it, [redacted] worked as crew leaders, and the workers were paid in cash.
9. 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;
10. Three affidavits from farmer [redacted] stating he had been introduced to [redacted] by [redacted] who referred to Mr. [redacted] as his General Manager. He further stated he had been introduced to [redacted] and [redacted] by Mr. [redacted] who referred to them as field foremen who would supervise the work of Mr. [redacted] acreage;
11. 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] and [redacted] as well as field workers, remained unchanged at the time of the ownership change; [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;

- f. [REDACTED] remained with the business after he sold it;
- g. [REDACTED] acknowledged, in a sworn statement, that [REDACTED] and [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. [REDACTED]. 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. Tom Tanaka, 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 Mr. [REDACTED] had stated that, *to the best of his knowledge*, Mr. [REDACTED] never worked for KCP. By virtue of the fact that Mr. [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 James Stafos sold the farming operation to Mr. [REDACTED] Mr. [REDACTED] stayed on and directed many of the activities, and that Mr. [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, Mr. [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.

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

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