

**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**



**U.S. Citizenship  
and Immigration  
Services**

**PUBLIC COPY**



LH

FILE: [Redacted]

Office: CALIFORNIA SERVICE CENTER

Date: **AUG 19 2005**

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: SELF-REPRESENTED

**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, Western Service Center, reopened and again denied by the Director. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

In the initial decision of denial, the director denied the application because the applicant failed to submit a complete application within the time permitted as required of S-9 preliminary applicants. In the subsequent denial, the director denied the application because the applicant failed to establish the performance of at least 90 man-days of qualifying agricultural employment during the eligibility period. This decision was based on evidence adverse to the applicant's claim of employment for Luis T. Gallardo.

Although the applicant did not respond to the more recent decision of denial, his appeal taken from the previous decision of denial is still in effect. In that appeal, the applicant stated that he was called to Mexico because of an emergency regarding his son and did not have any papers to get back into the United States.

A Group 2 special agricultural worker is a worker who during the twelve-month period ending on May 1, 1986, has performed at least 90 man-days in the aggregate of qualifying agricultural employment in the United States. 8 C.F.R. § 210.1(h)

An applicant for temporary resident status under section 210 of the Act "has the burden of proving by a preponderance of the evidence that he or she has worked the requisite number of man-days, is admissible to the United States... and is otherwise eligible for adjustment of status under this section." 8 C.F.R. § 210.3(b). When something is to be established by a preponderance of evidence it is sufficient that the proof only establish that it is probably true. See generally, McCormick, Evidence sec. 339 (2d ed. 1972).

On the Form I-700 application, the applicant claimed to have harvested vegetables for [REDACTED] for 120 man-days, from May 1985 to May 1986 in Santa Clara County, California.

In support of the claim, the applicant submitted a corresponding Form I-705 affidavit and a separate form employment verification letter, both of which were purportedly signed by [REDACTED]

On October 29, 1990, the application was denied because the applicant had failed to submit the required supporting documentation during the time allotted. On appeal, the applicant indicated that he was unable to submit the documentation in a timely manner because he had to return to Mexico because of an emergency and could not get back into the United States. On February 25, 1991 the application was reopened and on that date the applicant was informed of adverse evidence pertaining to his claimed employment. Specifically, the applicant was informed that [REDACTED] provided the Service with information regarding the format of documentation he provided his employees and that the applicant's documentation did not match that format. The applicant was provided with no further information.

The applicant has not been provided with any specific reasons as to why his documentation is deficient. Nor does the record contain any examples of documentation that Mr. [REDACTED] provided his employees. Therefore, in the absence of such documentary evidence, it cannot be concluded that the documentation submitted by the applicant is incredible.

The documentation submitted by the applicant throughout the application process appears to be consistent and to corroborate the applicant's claim. Such documents may be accorded substantial evidentiary weight. It is, therefore, concluded that the applicant performed the requisite qualifying agricultural employment during the twelve-month statutory period ending May 1, 1986.

There are no known grounds of ineligibility, and it appears the application should be approved.

**ORDER:** The appeal is sustained.