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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: FEB 23 2005

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: Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided 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, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The director denied the application because the applicant's duties did not clearly constitute qualifying agricultural employment.

On appeal, the applicant provides a statement from the nursery owner, setting forth the applicant's duties.

An applicant must have engaged in qualifying agricultural employment, which has been defined as "seasonal agricultural services," for at least 90 man-days during the twelve-month period ending May 1, 1986, pursuant to 8 C.F.R. § 210.1(h). The term *man-day* means the performance during any day of not less than one hour of qualifying agricultural employment for wages paid. 8 C.F.R. 210.1(j).

Section 210(h) of the Act, 8 U.S.C. 1160, defines "seasonal agricultural services" as the performance of field work related to the planting, cultural practices, cultivating, growing, and harvesting of fruits and vegetables of every kind *and other perishable commodities*, as defined in regulations by the Secretary of Agriculture.

According to 7 C.F.R. § 1d.7, "other perishable commodities" means those commodities which do not meet the definition of fruits or vegetables, that are produced as a result of seasonal field work, and have critical and unpredictable labor demands. "Horticultural specialties," or nursery products as defined in 7 C.F.R. § 1d.6, are included as other perishable commodities due to their reliance on seasonal and labor intensive field work.

"Field work" means any employment performed on *agricultural lands* for the purpose of planting, cultural practices, cultivating, growing, harvesting, drying, processing, or packing any fruits, vegetables, or other perishable commodities. 7 C.F.R. § 1d.4.

"Agricultural lands" means any land, cave, or structure, except packinghouses or canneries, used for the purpose of performing field work. 7 C.F.R. § 1d.2.

Clearly, nurseries are agricultural land because they are used for the purpose of performing fieldwork in perishable commodities, namely horticultural specialties. Thus, it is possible for an alien who engaged in fieldwork activities as defined above with horticultural specialties in a nursery to qualify for temporary residence, as he was engaged in fieldwork on agricultural land. On the other hand, an alien who worked with horticultural specialties as a landscaper on commercial and residential properties would not qualify because such properties are not agricultural land, as they are not used for the purpose of performing fieldwork. While the *purpose* of a nursery is the production of horticultural specialties, the same cannot be said of yards and other properties on which landscaping takes place.

The applicant, on his Form I-700 application, claimed to have irrigated and maintained trees for 300 days from May 1, 1985 to May 1, 1986 at All Seasons in San Diego County.

In support of his claim, the applicant submitted a corresponding affidavit from the owner of [REDACTED] [REDACTED]. Later, upon the request of the director, the owner submitted a more specific affidavit, which indicated that the applicant planted rose plants, pine trees, blackberries, strawberries and ice plants, and watered all of those and fruit trees as well.

In spite of this evidence, the director requested that the applicant furnish another specific statement from the owner. The applicant failed to respond, and the director denied the application.

On appeal, the applicant provides yet another statement from the owner of All Seasons Garden and Nursery Services, who explains in detail how the applicant worked in their nursery for 70% of the average workday. He points out that the company purchases thousands of bareroot trees from the U.S. Forest Service for reforestation work.

While the applicant performed duties that would be classified as landscaping in the [REDACTED] he also performed qualifying nursery duties. It is noted that as little as one hour of nursery work a day qualifies as a man-day of work, as explained above.

The applicant has, therefore, established the performance of at least 90 man-days of qualifying agricultural employment during the twelve-month eligibility period ending May 1, 1986.

**ORDER:** The appeal is sustained.