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U.S. Citizenship
and Immigration
Services

L4



FILE: [REDACTED]

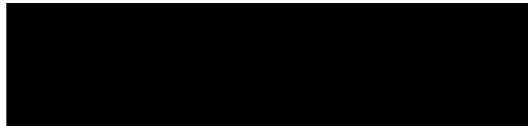
Office: CALIFORNIA SERVICE CENTER

Date: NOV 10 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:



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, and is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded for further consideration and action.

The director concluded the documentation submitted did not satisfy the applicant's burden of proof of having performed qualifying agricultural employment. This conclusion was purportedly based on derogatory evidence obtained from Service attempts to verify the applicant's claimed employment.

The applicant was advised of derogatory evidence prior to the issuance of the decision. However, such derogatory evidence, specifically, evidence of the Service's contact with the Employment Development Department in Calexico, California, and a copy of the statement from [REDACTED] was not entered into the record of proceeding. When any decision will be based, in whole or in part, on derogatory evidence, such evidence must be incorporated into the record.

The adverse evidence currently in this record is insufficient to support the director's finding in this case. The director must incorporate into the record any and all adverse evidence which has been cited as supporting the decision of denial. If such evidence cannot be located, or if the evidence in the director's possession differs from that described by the director, the director must render a new decision which, if adverse, may be appealed without fee.

ORDER: The case is remanded for appropriate action and decision consistent with the foregoing.