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U.S. Citizenship  
and Immigration  
Services

L4

FILE:



Office: CALIFORNIA SERVICE CENTER

Date: **OCT 18 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. 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 District Director, San Francisco, California, reopened and denied again 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, the actual adverse evidence which served as the basis for denial in this case, the copies of the I-705 affidavits purported to [REDACTED] were not entered into the record of proceedings. 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. If other significant adverse evidence exists or can be acquired, the director shall serve it on the applicant and accord him/her the opportunity to rebut it. A new decision must be rendered which, if adverse, may be appealed without fee.

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