

PUBLIC COPY

U.S. Department of Homeland Security
20 Mass. Rm. A3042, 425 I Street, N.W.
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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



L4

FILE:



Office: NEBRASKA SERVICE CENTER

Date: **OCT 19 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:



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 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 based on adverse information obtained from Service attempts to verify the applicant's claimed employment.

The record does not indicate the applicant was advised of any derogatory evidence prior to the issuance of the decision. When the decision will be adverse to the applicant on the basis of derogatory evidence considered by the Service and of which the applicant is unaware, he shall be advised thereof and offered an opportunity to rebut it and present evidence in his behalf before the decision is rendered. 8 C.F.R. § 103.2(b)(16)(i).

The burden of proof is upon an applicant to establish he performed his claimed employment. He must submit some type of documentation which would tend to verify his claim. There is no mandatory type of documentation required. However, the documentation must be credible. The applicant submitted documentation in response to the Service's request for evidence which has not been considered by the director. The director must address all the evidence furnished and make a decision as to its credibility.

Accordingly, the case will be remanded for the purpose of sending the applicant a notice of adverse information prior to rendering a new decision addressing the above. The applicant will be permitted to file an appeal without a fee from a new decision of denial.

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