

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

Lu



JUN 29 2006

FILE: [Redacted]
XKA-87-082-1001

Office: NEBRASKA SERVICE CENTER

Date:

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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter 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, Chief
Administrative Appeals Office

DISCUSSION: The application for temporary resident status was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director denied the application because the applicant admitted at the interview that he had not performed the agricultural employment that he had initially claimed on his application.

On appeal, the applicant presents a third version of his purported employment for Kansas City Produce and Tanaka Farms. This time he states that he worked during 1984, 1985, 1986 and 1987. The applicant does not address his sworn statement made during his legalization interview, in which he indicated that he worked in a warehouse and picked spinach for only one month.

In order to be eligible for temporary resident status as a special agricultural worker, an alien must have engaged in qualifying agricultural employment for at least 90 man-days during the twelve-month period ending May 1, 1986, provided he is otherwise admissible under section 210(c) of the Act and is not ineligible under 8 C.F.R. § 210.3(d). 8 C.F.R. § 210.3(a). An applicant has the burden of proving the above by a preponderance of the evidence. 8 C.F.R. § 210.3(b).

On his Form I-700 application, the applicant claimed 110 man-days employment picking cucumbers for K.C. Produce, Inc. from August 1985 to May 1986.

In a sworn interview with a Service officer on September 6, 1989, the applicant stated that he arrived in the United States in January 1985, went to Kansas City and began work after one month. The applicant stated that he worked for Kansas City Produce for a year and two months. He stated that he worked in a building cleaning and packing lettuce and onions. The applicant also stated that he prepared salads and picked spinach for about a month. When specifically asked if he picked produce for ninety days, he replied "no."

"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. These activities have to be performed on agricultural land in order to produce fruits, vegetables, and other perishable commodities, as opposed to those activities that occur in a processing plant or packinghouse not on agricultural land. 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 (emphasis added).

The U.S.D.A. definition of "agricultural lands" as it pertains to the special agricultural worker program expressly excludes packinghouses and canneries. Such processing facilities are included under the term "packinghouses", and are not considered "agricultural lands" regardless of proximity to field production sites. Work performed in such facilities is not "field work" within the meaning of 7 C.F.R. § 1d.4. (Service Legalization Wire #23, CO 1588, dated June 5, 1987.)

On appeal, the applicant states that he had several jobs when he worked for Kansas City Produce and Tanaka Farms. He states that he lifted boxes and baskets of crops and carried them to the packaging area during the years 1984, 1985 and 1986.

The applicant has not actually recanted his sworn statement, which indicates that he failed to perform a minimum of 90 man-days of qualifying agricultural employment for Kansas City Produce from May 1, 1985 to May 1, 1986. Further, his statement on appeal fails to establish the performance of a minimum of 90 man-days employment during that qualifying period. Therefore, it cannot be concluded that the applicant performed more than 30 man-days employment harvesting spinach, noting that the dates of that purported employment are not known.

In order to be eligible for temporary resident status, an alien must have engaged in qualifying agricultural employment for at least 90 man-days during the twelve-month period ending May 1, 1986. In this case, the applicant has admitted that he did not perform the requisite employment during the qualifying period. The

applicant's statements made on appeal have been considered in light of his other statements. As the applicant has not demonstrated eligibility for the benefit sought, the appeal must be dismissed.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.