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U.S. Citizenship
and Immigration
Services

LA

FILE: [REDACTED]
XFR 88 244 02073

Office: CALIFORNIA SERVICE CENTER

Date: **MAY 16 2007**

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Status as a Special Agricultural Worker pursuant to Section 210
of the Immigration and Nationality Act, as amended, 8 U.S.C. § 11060

ON BEHALF OF APPLICANT:

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, Chief
Administrative Appeals Office

DISCUSSION: The application for temporary resident status as a special agricultural worker was denied by the Director, Western Service Center. The applicant's appeal from the decision was sustained by the Director, Administrative Appeals Office (AAO). The application was then reopened and denied again by the Director, California Service Center. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant had been admitted to the United States as an S-9 preliminary applicant. The director denied the application because the applicant submitted employment documents which differed significantly from the claim of employment set forth on the Form I-700, Application for Temporary Resident Status as a Special Agricultural Worker. Specifically, the director stated that the applicant claimed on the Form I-700 that he worked for [REDACTED] in Kings County, California, for ninety days producing cotton from January through May 1986, but the applicant submitted in support of the application a Form I-705 agricultural employment affidavit from farm labor contractor [REDACTED] stating that the applicant worked for him for 98 days chopping cotton during the period from May 1985 to May 1986.

On May 18, 1992, the applicant filed an appeal from the denial decision. On appeal, the applicant stated that he did work for farm labor contractor [REDACTED]. The applicant explained that [REDACTED] was Mr. [REDACTED] foreman. In support of his statement, the applicant submitted a letter from [REDACTED] stating that the applicant worked for him for 98 days picking cotton between May 1985 and May 1986. Mr. [REDACTED] explained that [REDACTED] was his foreman and the applicant thought [REDACTED] was his actual employer because the applicant never had direct contact with him, only with his foreman.

On May 14, 2001, the Director of the AAO remanded the case, finding that any minor discrepancies between the applicant's employment claim on the Form I-700 and the Form I-705 had been reconciled and the applicant had given a reasonable explanation for his failure to realize that his actual employer was [REDACTED] and that [REDACTED] was Mr. [REDACTED] foreman.

The director concluded that the applicant had not overcome the finding that he had advanced a revised employment claim and affirmed his prior denial decision.

On July 20, 2006, the Director of the AAO reopened the case *sua sponte* and sustained the appeal, finding that the documentation submitted by the applicant throughout the application process appeared to be consistent and to corroborate the applicant's claim and, therefore, concluded that the applicant performed the requisite qualifying agricultural employment during the twelve-month statutory period ending May 1, 1986. The AAO director instructed the director to adjudicate the Form I-700 application accordingly.

On August 18, 2006, the director found the applicant had established his claim of qualifying agricultural employment for [REDACTED] however, the applicant's previous fingerprint results report had expired. Therefore, the director issued a fingerprint appointment notice on August 25, 2006, instructing the applicant to appear at the Citizenship and Immigration Services (CIS) office in

Yuma, Arizona, to be fingerprinted on September 8, 2006. The fingerprint appointment notice was mailed to the applicant's address of record, but the applicant failed to appear for his fingerprint appointment or request another opportunity to be fingerprinted.

The director, therefore, denied the application again on December 8, 2006, because the applicant failed to appear for his fingerprint appointment or request another opportunity to be fingerprinted.

An applicant for temporary resident status under section 210 of the Act "has the burden of proving by a preponderance of the evidence that he or she has worked the requisite number of man days, is admissible to the United States . . . and is otherwise eligible for adjustment of status under this section." 8 C.F.R. § 210.3(b).

Each applicant, regardless of age, must appear at the appropriate Service office and must be fingerprinted for the purpose of issuance of Form I-688A. 8 C.F.R. § 210.2(c)(2)(iv).

Declarations by an applicant that he or she has not had a criminal record are subject to verification of facts by the Service. The applicant must agree to fully cooperate in the verification process. All evidence regarding admissibility and eligibility submitted by the applicant for adjustment of status will be subject to verification by the Service. 8 C.F.R. § 210.3(b)(3).

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, and must be otherwise admissible under section 210(c) of the Act and 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)(1). In this case, the applicant failed to appear for his fingerprint appointment interview or request another opportunity to be fingerprinted. Therefore, he has failed to establish his eligibility for temporary resident status as a special agricultural worker.

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