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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: **OCT 20 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 Director, Western Service Center. It is now before the Administrative Appeals Office on appeal. The case will be remanded for further consideration and action.

The director denied the application for lack of prosecution because the applicant failed to appear for the required interview regarding his Application for Temporary Residence as a Special Agricultural Worker.

On appeal, the applicant indicated that he did not receive the notices because he had moved and the notices were sent to an old address.

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).

Pursuant to 8 C.F.R § 210.2(c)(2)(iv), each alien who filed his application in the United States, regardless of age, must appear at the appropriate Service legalization office and must be fingerprinted... Each applicant shall be interviewed by an immigration officer, except that the interview may be waived when it is impractical because of the health of the applicant.

The record of proceedings does not contain any evidence that the applicant was ever scheduled for an interview and provided with a written notice of when an interview was scheduled to take place. The decision makes no reference to any specific interview date(s) on which the applicant failed to appear. Therefore, it cannot be concluded that the applicant was ever provided with an interview date.

The case is remanded for the scheduling of a legalization interview. The applicant will be informed, in writing, of the date of his scheduled interview. The applicant will be provided with sufficient lead time to enable him to make preparations to attend. Subsequent to the interview, the director will consider all the evidence and render a new decision. If the decision will be adverse, the applicant will be advised of the derogatory evidence and afforded a chance to respond.

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