PUBLIC COPY
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

U.S. Citizenship
and Immigration
Services

[redacted]

FEB 02 2004

FILE: [redacted] Office: CALIFORNIA 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. 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 and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant's landscaping duties did not constitute qualifying agricultural employment.

On appeal, the applicant indicates that he believes he should have applied for temporary residence status under section 245A of the Immigration and Nationality Act (INA), rather than having applied for temporary residence as a special agricultural worker under section 210 of the INA.

An applicant must have engaged in qualifying agricultural employment, which has been defined as "seasonal agricultural services," for at least 90 man-days during the twelve-month period ending May 1, 1986, pursuant to 8 C.F.R. § 210.1 (h).

Section 210(h) of the INA, 8 U.S.C. 1160, defines "seasonal agricultural services" as the performance of field work related to the planting, cultural practices, cultivating, growing, and harvesting of fruits and vegetables of every kind and other perishable commodities, as defined in regulations by the Secretary of Agriculture.

According to 7 C.F.R. § 1d.7, "other perishable commodities" means those commodities which do not meet the definition of fruits or vegetables, that are produced as a result of seasonal field work, and have critical and unpredictable labor demands. "Horticultural specialties," or nursery products as defined in 7 C.F.R. § 1d.6 are included as other perishable commodities due to their reliance on seasonal and labor intensive field work.

"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. 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.

Clearly, nurseries are agricultural land because they are used for the purpose of performing field work in perishable commodities, namely horticultural specialties. Thus, it is possible for an alien who engaged in field work activities as defined above with horticultural specialties in a nursery to qualify for temporary residence, as he was engaged in field work on agricultural land. On the other hand, an alien who worked with horticultural specialties as a landscaper on commercial and residential properties would not qualify because such properties are not agricultural land, as they are not used for the purpose of performing field work. While the purpose of a nursery is the production of horticultural specialties, the same cannot be said of yards and other properties on which landscaping takes place.

On the Form I-700 application, the applicant claimed 103 man-days hoeing, planting, transplanting, and pruning lawns, plants, and flowers for John's Gardening in Santa Clara County, California from May 1985 to May 1986.

In support of the claim, the applicant submitted a Form I-705 affidavit and a separate employment statement, both purportedly signed by [redacted] On the Form I-705, [redacted] indicated that the applicant worked as a gardener's helper, and that the 103 man-days cited by the applicant on the Form I-700 application, actually occurred from July 4, 1985 to December 31, 1985. [redacted] also indicated that the applicant's full term of employment occurred from July 4, 1985 to July 9, 1987 in his separate employment statement.

It must be noted that the applicant also claimed 166 man-days cutting lettuce for Paul William Bertucci in San Benito, California from May 1983 to May 1985. The applicant also included supporting documentation that corroborates this claim of employment, as well additional periods of the same or similar employment from March 8, 1980 to December 30, 1980, and July 16, 1987 to November 12, 1987. However, as such agricultural employment did not occur during the eligibility period from May 1, 1985 to May 1, 1986, it need not be discussed further.

The director concluded the applicant had performed only landscaping duties during the eligibility period from May 1, 1985 to May 1, 1986, and denied the application on February 5, 1992.

On appeal, the applicant declares that he should have applied for temporary residence status under the legalization provisions of section 245A of the INA, rather than having applied for temporary residence as a special agricultural worker under section 210 of the INA.

Congress provided a 12-month application period for those seeking benefits under the legalization program. Section 245A(a)(1)(A) of the INA. This designated eligibility period extended from May 5, 1987, to May 4, 1988. The statute's legislative history indicates that Congress intended aliens to come forward during this eligibility period because, as in the words of United States Senator Alan Simpson, "this is the first call and the last call." 132 Cong. Rec. S16,888 (daily ed. Oct. 17, 1986). It is stipulated the application must have been properly filed on Form I-687, within the aforementioned filing period, at a local legalization office or a qualified designated entity. 8 C.F.R. § 245a.2(e).

In an effort to encourage filing within the eligibility period Congress devised a network of "qualified designated entities" (QDEs) to assist in the legalization process. Congress desired to "assure applicants that they may apply to such entities without fearing that their applications will be forwarded to the INS even if in the view of such entities they do not qualify for legalization." S. REP. NO. 132, 99th Cong., 1st Sess. 47 (1985).

The Service (now Citizenship and Immigration Services, or CIS) widely publicized not only the availability of QDEs, but also the legalization and special agricultural worker programs. As such, the applicant could have consulted a QDE regarding his application or he could have retained private counsel in preparing his legalization claim. In addition, local legalization offices staffed by employees of CIS were also available to provide assistance to the applicant. Therefore, the applicant had ample opportunity to determine his/her eligibility and file for the appropriate program.

To allow the applicant to file for legalization at this late date would not only violate the statute but also frustrate Congressional intent that legalization be a one-time-only program. Furthermore, the applicant has not cited any authority that even allows the AAO to directly accept applications. As such, the applicant's late request for the benefit of temporary residence under section 245A of the INA cannot be accepted.

The applicant applied for specific benefits as a special agricultural worker. His application has been adjudicated under section 210 of the INA. In accordance with statute, the applicant has been found to be ineligible for temporary resident status as a special agricultural worker.

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