U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

L-1

[redacted]

JUL 1 2004

FILE: [redacted] 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:

[redacted]

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, Director
Administrative Appeals Office

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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DISCUSSION: The application for temporary resident status as a special agricultural worker was denied by the Director, Northern Regional Processing Facility. A subsequent appeal was dismissed by the Director, Legalization Appeals Unit. The case is now reopened by the Administrative Appeals Office. The appeal will be sustained.

The facility director found that had not worked at (KCP) as claimed, and therefore could not attest to anyone's employment there. The director concluded that the applicant, whose application was supported by affidavits from , had not worked at KCP.

The Director, Legalization Appeals Unit, dismissed the appeal on the same basis.

Pursuant to 8 C.F.R. 103.5(b), the Administrative Appeals Office will *sua sponte* reopen or reconsider a decision under section 210 of the Immigration and Nationality Act (the Act) when it determines that manifest injustice would occur if the prior decision were permitted to stand. *Matter of O--*, 19 I&N Dec. 871 (Comm. Feb. 14, 1989)

The adverse information used in this proceeding, th did not work a was not accurate. Therefore, the matter will be reopened.

In order to be eligible for temporary resident status under section 210 of the Act an alien must have engaged in qualifying agricultural employment for at least 90 days during the twelve-month period ending May 1, 1986. *See* 8 C.F.R. § 210.3(a).

In addition to the original affidavits from attesting to the applicant's employment at KCP for approximately 130 days from June 1985 to November 1985, the applicant has furnished:

1. Her own affidavit, dated February 5, 1996, listing the crops she planted and harvested for KCP in 1985, and explaining that the workers were brought to various locations in Kansas to work. She explained that her crew worked fo , and that she was paid in cash every week;

2. A May 23, 1995 notice from the in Kansas City, Missouri, showing the 1985-89 dates of the applicant's treatment;

3. An affidavit dated May 5, 1985 from Nurse Coordinator in the Migrant Health Program of the Kansas City/Wyandotte County Department of Health, stating she knew and five others as workers with supervisory responsibilities with KCP;

4. An affidavit dated February 22, 1996 from Assistant Administrator of the non-profit organization El Centro, Inc., pointing out that between May 1, 1985 and September 1985 she made field visits to and became acquainted with the applicant there. In a second affidavit, dated May 5, 1995 provided the same information about the supervisors as that furnished by and stated that was the primary employer of field workers in the Kansas City area. She stated that, to her knowledge, the field workers were paid in cash;

5. An affidavit dated May 3, 1995 from Area Director of another non-profit organization, describing in detail her duties for and stating that James Stafos continued to work a even after he sold the business to Tom

She also stated that she did not recall ever seei in the fields, and that the primary KCP payroll procedure was to pay the field workers their wages in cash. Also furnished was an affidavit dated May 3, 1995 from , Executive Director of Harvest America, Inc., supporting the affidavits of her employe

6. A February 10, 1995 affidavit from , explaining that he had worked as a crew leader for 30 years for the enterprise known variously Farms and KCP. indicated that, although owned KCP for a short while continued to essentially run i worked as crew leaders, and the workers were paid in cash;

7. An affidavit from farme explaining that in 1985 he contracted with KCP to plant and harvest corn on his acreage, and that and his crew leaders, supervised the efforts;

8. Three affidavits from farmer stating he had been introduced to by who referred to as his General Manager. He further stated he had been introduced t who referred to them as field foremen who would supervise the work o acreage;

9. A six-page overview written by counsel entitled "The Business Structure of Inc.," stating among other things that:

   a. In 198 sold his farm to who renamed it
   b. The enterprise consisted of about 1600 acres, either owned by KCP or owned by private farmers who contracted with KCP;
   c. Crew leaders such as as well as field workers, remained unchanged at the time of the ownership change;
   d. conducted the payroll operation and issued large checks to the crew leaders who then dispersed cash to the workers;
   e. There were an estimated 600-1000 field workers at KCP during the 1985 season;
   f. remained with the business after he sold it;
   g. acknowledged, in a sworn statement, that had worked for him at KCP.

In support of the overview, counsel provided transcripts of court testimony by various individuals in the case of *United States of America vs Isuara Rocha a/k/a/ Isuara Galvan*, Criminal Action No. 91-20043-012. Sheldon Singer, attorney for the trustee in a bankruptcy action filed by KCP in 1985, stated that he believed a number of employees were paid in cash and had no idea whether the payroll ledger contained the names of all of the KCP employees. testified that the payroll account for the field workers was separate from the payroll account for the KCP warehouse workers. He also testified that company records for field workers paid in cash were destroyed. in a separate proceeding, testified that and worked for him at KCP.

The facility director, in denying the application, indicated that , the owner of KCP, had stated that had not worked for KCP in 1985-86. The director relied on an investigative report that indicated tha had stated that, *to the best of his knowledge*, never worked for KCP. By virtue of the fact that qualified his alleged statement by saying "to the best of my knowledge," it must be concluded that he was not sure. Indeed, numerous individuals have stated or officially testified in court that, although s sold the farming operation to s stayed on and directed many of the activities, and that was not fully aware of all that was going on in that very large

operation for the short time that he owned it before KCP filed for bankruptcy. At any rat did testify, in a separate proceeding, that had worked for him at KCP.

The facility director also stated that the payroll records confirmed that did not work for KCP. As noted above, there is doubt as to whether the payroll records that the director reviewed related to all of the *field* operations. It appears that the regularly-employed *warehouse* workers at KCP were paid by check, and that the payroll records reflected *that* employment..

Although not addressed by the facility director or the LAU director, tated in his affidavit that he was a crew leader, but not the applicant's crew leader d not claim to be a crew leader, but simply stated he was an employee. Nevertheless, both attested to the applicant's employment. There is no requirement that an actual crew leader, or owner of a farm, provide an affidavit. It is possible that the applicant's actual crew leader was unavailable or unwilling to attest to her employment, and and agreed to do so *was* the applicant's husband's crew leader, and he may well have known of her employment from seeing them together at the beginning and end of the work day. It would seem that i had wanted to lie on behalf of the applicant, he would have simply stated that he was her crew leader in order to not raise any further questions.

It is reiterated that also indicated that she saw the applicant in the fields, working for KCP.

An alien applying for special agricultural worker status has the burden of proving by a preponderance of evidence that he or she worked the requisite number of man-days in qualifying employment. He or she may meet this burden by providing documentation sufficient to establish the requisite employment as a matter of just and reasonable inference. *See* 8 C.F.R. § 210.3(b).

Given the very extensive evidence provided by counsel, it is concluded that Gilbert Rocha, and most likely Robert Conover, worked at KCP during the qualifying period, and that the applicant worked there as well. The applicant has met her burden of proof.

ORDER: The decision of the Legalization Appeals Unit is withdrawn. The appeal is sustained.