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

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: JUL 21 2004

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 ent

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application for temporary resident status as a special agricultural worker was denied by the Director, Northern Regional Processing Facility, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained.

The facility director found that and had not worked at Kansas City Produce (KCP) as supervisors 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

On appeal, the applicant points out that is no longer operative, and that the business records were unavailable when he filed his application. He refers to court testimony of and others.

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).

The applicant submitted an undated Form I-705 affidavit from attesting to the applicant's employment at for approximately 155 days from May 1, 1985 to April 30, 1986. indicated he was a foreman, and the applicant's immediate supervisor. in his undated Form I-705 affidavit, stated that he was a foreman and that he frequently saw the applicant working in the fields. He attested to the applicant's employment, and stated that all farm records had been destroyed because of the closure of the company. also submitted another affidavit, dated March 29, 1988, attesting to the applicant's employment. He furnished a third affidavit, dated October 12, 1988, reiterating that the applicant had worked for and that all farm records had been destroyed due to the bankruptcy proceedings. The applicant also furnished:

1. His own affidavit, dated May 6, 1995, providing information about the crops, and the time-frames in which he worked. He stated that his crew leaders were and and that he was paid in cash every Friday or Saturday. In his appellate statement, the applicant indicated that he thought (owner of had lied to the Immigration and Naturalization Service about and not having worked there;

2. An affidavit dated May 5, 1985 from Nurse Coordinator in the of the Kansas City/Wyandotte County Department of Health, stating she knew and six others as workers with supervisory responsibilities with KCP during the required period;

3. 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 KCP 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. In an October 5, 1994 affidavit, also of El Centro, stated that they met the applicant in the summer of 1985 when he participated in the religious activities and other activities they conducted in the camps;

4. 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 at even after he sold the business to She also stated that she did not recall ever seeing in the fields, and that the primary payroll procedure was to pay the field workers their wages in cash. In another affidavit dated May 3, 1995, she indicated that, at the height of the 1985 growing season, she would make field visits as often as three times a week, and that is how she became acquainted with the applicant. She stated he worked in excess of 90 days in the fields farmed by Also furnished was an affidavit dated May 3, 1995 from Executive Director of Harvest America, Inc., supporting the affidavits of her employee

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

6. An affidavit from farmer Robert Trude, explaining that in 1985 he contracted with to plant and harvest corn on his acreage, and that Jim Stafos and his crew leaders, supervised the efforts;

7. 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 to and who referred to them as field foremen who would supervise the work of acreage;

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

   a. In 1984 sold his farm to who renamed it Kansas City Produce;
   b. The enterprise consisted of about 1600 acres, either owned by or owned by private farmers who contracted with
   c. Crew leaders such as and 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 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

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. attorney for the trustee in a bankruptcy action filed by 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 employees. testified that the payroll account for the field workers was separate from the payroll account for the warehouse workers. He also testified that company records for field workers paid in cash were destroyed. in a separate proceeding, testified that and orked for him at

The facility director, in denying the application, indicated that the owner of had stated that had not worked for in 1985-86. The director relied on an investigative report that indicated that had stated that, *to the best of his knowledge,* never worked for 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 sold the farming operation 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 filed for bankruptcy. These same individuals, and others, have attested to the employment of and throughout the required twelve-month period.

The facility director also stated that the payroll records confirmed that did not work for As noted above, there is great doubt as to whether the payroll records that the director reviewed included all of the field workers and those that supervised their efforts. The director also stated that the payroll records showed that had only worked at for one week during the qualifying period. Again, the testimony that worked the entire time is overwhelming.

It is noted that the vast majority of aliens who claimed to have worked at filed identically-worded "form letter" appeals. Conversely, the applicant specifically refers on appeal to a federal court case in which numerous individuals such as and testified. Furthermore, in very few instances did provide an additional affidavit, as he did in this case, when an applicant was asked to provide further evidence. These factors differentiate this case from the majority of the cases.

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 and did indeed supervise at during the qualifying period, and that the applicant did work there as claimed. The applicant has met his burden of proof.

ORDER: The appeal is sustained.