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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 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, 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 Kansas City Produce (KCP) as a supervisor as claimed, and therefore could not attest to anyone's employment there. The director concluded that the applicant, whose application was supported by an affidavit from had not worked at

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, that did not work at KCP, 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 affidavit from attesting to the applicant's employment at KCP for approximately 112 days from May 10, 1985 to September 2, 1985, the applicant has furnished:

1. His own affidavit, dated May 26, 1998, listing the crops he planted and harvested for KCP in 1985, and explaining that the workers were brought to various locations in Kansas to work. He explained that his crew worked for and that he was paid in cash every Friday or Saturday;

2. An affidavit from dated November 19, 1987, stating the applicant lived with him in Kansas City from May 7, 1985 to September 7, 1985, and that the applicant then went to work at

3. An affidavit dated May 5, 1985 from R.N., Nurse Coordinator in the Program of the stating she knew James and six others as workers with supervisory responsibilities with In another affidavit dated June 5, 1998, stated that she became acquainted with the applicant during her field visits at KCP, and attested to his employment in excess of 90 days;

4. An affidavit dated May 5, 1995 from Assistant Administrator of the non-profit organization El Centro, Inc., providing the same information about the supervisors as that furnished by and stating 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 , another non-profit organization, describing in detail her duties for Harvest America, Inc., and stating that continued to work at KCP even after he sold the business to Tom

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. Also furnished was an affidavit dated May 3, 1995 from Executive supporting the affidavits of her employee

6. 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 KCP for a short while, continued to essentially run it, worked as crew leaders, and the workers were paid in cash;

7. An affidavit from farmer 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 his General Manager. He further stated he had been introduced to by who referred to them as field foremen who would supervise the work of acreage;

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

   a. In 1984 sold his farm to who renamed it
   b. The enterprise consisted of about 1600 acres, either owned by or owned by private farmers who contracted with
   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 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 worked 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 to 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. At any rate, did testify, in a separate proceeding, that had worked for him at

The facility director also stated that the payroll records confirmed that did not work for As noted above, there is doubt as to whether the payroll records the director reviewed included all of the field workers and their supervisors.

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 did indeed work at KCP during the qualifying period, and that the applicant did work for him as claimed. The applicant has met his burden of proof. Furthermore, as noted by the facility director initially, the applicant also worked for at Stephenson's Orchards for 47 days during the qualifying period.

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