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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 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 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, that did not work at 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 for approximately 155 days from May 1, 1985 to April 30, 1986, the applicant has furnished:

1. His own affidavit, dated May 6, 1996, listing the crops he planted and harvested for in 1985 and 1986, 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 September 20, 1988, indicating the applicant resided with him from November 1984 to June 1986, apparently in

3. An affidavit dated May 5, 1985 from R.N., Nurse Coordinator in the Migrant Health Program of the Kansas City/Wyandotte County Department of Health, stating she knew and six 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 Nancy Wynn 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;

5. An affidavit dated May 3, 1995 from Area Director of another non-profit organization, describing in detail her duties for and stating that 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 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 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 as 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 KCP 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 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 warehouse workers. He also testified that company records for field workers paid in cash were destroyed. in a separate proceeding, testified that worked for him at

The facility director, in denying the application, indicated that the owner of had stated that James Stafos had not worked for in 1985-86. However, 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 KCP filed for bankruptcy.

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 the director reviewed included all of the field workers and those that supervised their efforts.

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

ORDER: The decision of the Legalization Appeals Unit is withdrawn.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