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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, and is now before the Administrative Appeals Office on appeal. 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 KCP.

On appeal, the applicant states that he worked at KCP/Stafos during the required period, and at other times as well. He indicates that he heard that had sold the business to only because of bankruptcy problems. He asserts that was "a figurehead only," and that was there every day running the company.

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).

With his application, the applicant provided two affidavits from The Form I-705 affidavit attested to the applicant having worked for him for approximately 25 days from May 1, 1985 to June 15, 1985 at KCP, and for about 105 days from June 15, 1985 to November 10, 1985 at Riverview Farms. In the other affidavit, dated June 4, 1988, explained that he was which was originally known as and then for a short time until that company went bankrupt. He stated that, while acting as General Field Foreman for he regularly provided workers to Riverview Farms. In addition, the applicant furnished:

1. An affidavit dated June 10, 1988 from son of the owner of Riverview Farms, reiterating the business arrangement between Riverview Farms and

2. The applicant's own affidavit, dated May 4, 1995, explaining that he worked at KCP during the requisite 1985 period, and at other times as well. He indicated that his crew leaders were and that he was paid in cash every eight days;

3. Three affidavits from dated June 7, 1988, February 1, 1991 and September 15, 1992. stated that he had worked for at Stafos Farms/KCP/Muncie Farm since 1972. He indicated that he did not know the exact business structure of the farm, but that he did know that was always the main boss. He explained that he acquired lawful permanent resident status through the special agricultural worker program. indicated that the applicant resided with him from April through November of 1985, and from April through December of 1986. He further indicated that he worked with the applicant at KCP in 1985, and that he drove the applicant to work there on a daily basis;

4. A July 23, 1992 letter from R.N., Nurse Coordinator in the Migrant Health Program of the Kansas City/Wyandotte County Department of Health from 1978 to 1994, explaining her duties and pointing out that the applicant was registered into their program on May 18, 1981 while employed at Riverview Farms. In an affidavit dated May 4, 1995 stated that she knew

and six others as workers with supervisory responsibilities with KCP;

5. An affidavit dated May 5, 1995 from ssistant 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, also dated May 5, 1995, provided the same information about the supervisors as that furnished by and stated that KCP was the primary employer of field workers in the Kansas City area. In an earlier letter, dated October 16, 1992, she had mentioned that the applicant came to Kansas as early as 1982.

6. An affidavit dated May 3, 1995 from Area Director of Harvest America Corporation, another non-profit organization, explaining that from May 1, 1985 to May 1, 1986 she conducted outreach services from one to three days a week at KCP during the farming season and became acquainted with the applicant there. In an additional affidavit also dated May 3, 1995, she described in detail her duties for Harvest America, Inc., and stated that continued to work at KCP even after he sold the business to She also stated that she did not recall ever seeing 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 employee

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

8. 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, and supervised the efforts;

9. Three affidavits dated January 11, 1991 from farmer stating that he had been introduced to by who referred to as his General Manager. He further stated that he had been introduced to and by who referred to them as field foremen who would supervise the work on acreage. In two other affidavits, dated February 4, 1991 and July 13, 1992, stated that the applicant worked at his farm from approximately June 27 to August 10, 1985, under the direction of and

10. 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 KCP;
    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 KCP during the 1985 season,
f. remained with the business after he sold it;
g. acknowledged, in a sworn statement, that and 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. Tom Tanaka, 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. 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 James Stafos 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 or even 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 direct the operations of KCP 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.