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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: JUN 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. The file has been returned to the service center that processed 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 James Stafos 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 affidavits fro 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 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 affidavits fro attesting to the applicant's employment at KCP and at Riverview Farms for approximately 130 days from May 1, 1985 to November 20, 1985, the applicant has furnished:

1. His own affidavits, dated July 22, 1992 and September 20, 1995, explaining in detail the duties he performed for KCP from 1985 to 1992, and how the workers were brought to various locations to work. He stated that he was paid in cash every week.. He explained that his crew worked f crew leader for on farms throughout and at Riverview Farms. The applicant mentioned that he received aid from the non-profit organizations El Centro and Harvest America Corporation. He also noted that the visiting nurses from the Migrant Health Clinic of the Wyandotte County Health Department would perform medical services on location;

2. Three affidavits from the applicant's uncle dated June 7, 1988, February 1, 1991 and September 15, 1992. He stated that he had worked with the applicant at KCP, and that his own application for temporary resident status as a special agricultural worker was granted. He pointed out that he had worked for crew leade nder the "main boss from 1972 to 1991. He also stated that the applicant lived with him during the twelve-month qualifying period;

3. A July 2, 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 that the applicant was registered into the program in June 1985. In an affidavit dated May 3, 199 reiterated that the applicant had worked at KCP during the requisite period. In another affidavit dated May 4, 1995 tated that she knew and six others as workers with supervisory responsibilities with KCP;

4. An affidavit dated May 5, 1995 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, also dated May 5, 1995, Sister provided the same information about the supervisors as that furnished by nd stated that KCP was the primary employer of field workers in the Kansas City area. In a letter dated June 18, 1992 she explained that the applicant was still participating in their programs;

5. 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 fo and stated tha continued to work at KCP even after he sold the business to She also stated that she did not recall ever seein n the fields, and that the primary KCP payroll procedure was to pay the field workers their wages in cash. In a letter dated July 2, 1992 she noted that the applicant was still working at Muncie Farms, earlier known as KCP and Stafos farms. Also furnished was an affidavit dated May 3, 1995 from Executive Director of supporting the affidavits of her employe

6. An affidavit from dated February 10, 1994, stating 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;

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, and supervised the efforts;

8. Three affidavits from farmer stating he had been introduced to y 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 o acreage;

9. 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 KCP or owned by private farmers who contracted with KCP;
   c. Crew leaders such as s well as field workers, remained unchanged at the time of the ownership change;
   d. onducted 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. 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. n a separate proceeding, testified that orked for him at KCP.

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. At any rate did testify, in a separate proceeding, tha had worked for him at 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 James Stafos did indeed direct the field 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 decision of the Legalization Appeals Unit is withdrawn. The appeal is sustained.