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U.S. Citizenship and Immigration Services

[redacted]

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FILE: [redacted] Office: California Service Center Date: JAN 12 2005

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: Self-represented

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 Group 1 special agricultural worker was denied by the Director, Western Regional Processing Facility. The Director, Western Service Center subsequently considered the applicant for Group 2 status, and denied the application again. The matter was remanded by the Chief, Legalization Appeals Unit, and the Director, California Service Center considered the application under Group 2 provisions and denied it. It is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

A Group 1 special agricultural worker is a worker who has performed qualifying agricultural employment in the United States for at least 90 man-days in the aggregate in each of the twelve-month periods ending May 1, 1984, 1985, and 1986, and has resided in the United States for six months in the aggregate in each of those twelve-month periods. 8 C.F.R. 210.1(f)

A Group 2 special agricultural worker is a worker who during the twelve-month period ending on May 1, 1986, has performed at least 90 man-days in the aggregate of qualifying agricultural employment in the United States. 8 C.F.R. 210.1(g)

In order to be eligible for temporary resident status, an alien must have engaged in qualifying agricultural employment for at least 90 man-days during the twelve-month period ending May 1, 1986, provided he is otherwise admissible under section 210(c) of the Act and is not ineligible under 8 C.F.R. 210.3(d). If the alien did not work at least 90 days from May 2, 1985 through May 1, 1986 inclusive he cannot qualify for either Group 1 or Group 2 status.

The facility director denied the application for Group 1 status because the applicant failed to establish the performance of at least 90 man-days of employment during the first and second Group 1 twelve-month statutory periods ending May 1, 1984 and May 1, 1985. The applicant did not appeal such decision.

The applicant was entitled to have his application considered under the Group 2 provisions, which require him to show that he had worked at least 90 days in only the one twelve-month period, ending on May 1, 1986. Regarding that period, the applicant claimed on his application to have been employed at TT Ranch and Iron Horse Ranch, both in 1985. He did not specify when in 1985 he worked. On a different part of his application, the applicant indicated that he had worked under the aliases of [redacted] and [redacted]

The applicant submitted a photocopy of a 1985 Form W-2 Wage and Tax Statement showing he earned $228 working at Warnelius Vineyards. This document does not relate to either of his two employment claims. It is not clear when in 1985 this employment took place. Therefore, it is not clear that the employment occurred in the twelve-month period ending on May 1, 1986. The applicant also furnished a Form I-705 affidavit from Nils Warnelius, stating that the applicant worked 258 days there from what appears to be 1982 to 1984. And, he provided a 1984 Form W-2 showing he earned $2411 there that year.

He also furnished a pay stub from T-T Vineyards for the pay period ending on May 19, 1995, showing he had earned $360 in that period and $928 thus far for 1985. The applicant also submitted a letter from the owner of T-T Ranch and Vineyards, who indicated that *Juan Vasquez* worked there in 1985 and 1986. W-2 forms

show [redacted] earned $928 there in 1985, and $129 in 1986. Later, the applicant submitted a From I-705 affidavit from the owner of T-T, who stated that the applicant worked there for nine days from May 1, 1984 to April 30, 1985 and 22 days from May 1, 1985 to April 30, 1986.

The applicant submitted a letter from the owner of Iron Horse Ranch and Vineyards, stating that [redacted] worked there in 1986. Also attached was a W-2 form for [redacted] showing he earned only $312 in that year.

The Director, Western Service Center denied the application for Group 2 benefits, finding that the applicant had not provided documents that specifically showed that he had worked at least 90 days in the requisite period for Iron Horse and T-T. That director did not address the Warnelius employment.

The Chief, Legalization Appeals Unit remanded the matter, pointing out that the center director could have contacted the ranch owners if he had questions as to when the employment took place.

Finally, the Director, California Service Center denied the application again. He found that the applicant has never established that he worked under the name of [redacted] and therefore the documents pertaining to [redacted] reflect work that cannot be credited to the applicant. The applicant did not respond to that denial, or the earlier notice of intent to deny.

The evidence *in the name of the applicant* shows that he earned $228 working for Warnelius in 1985. This does not appear to equate to more than two week's work, and it is not clear that the work occurred, as required, after May 1, 1985. The affidavit from T-T shows that the applicant worked 22 days after May 1, 1985. Thus, the documents relating to the applicant demonstrate that he worked perhaps a maximum of 45 days at the two ranches in the twelve-month period ending on May 1, 1986.

There is considerable documentation showing that [redacted] worked in 1985 and 1986. However, as stated by the director, the applicant has not established that he worked under that name. In cases where an applicant claims to have met any of the eligibility criteria under an assumed name, the applicant has the burden of proving that the applicant was in fact the person who used that name. 8 C.F.R. 210.3(c)(2)

The applicant has failed to demonstrate that he engaged in qualifying employment for at least 90 days during the twelve-month period ending on May 1, 1986. Therefore, he cannot qualify for temporary resident status as a Group 1 or Group 2 special agricultural worker.

ORDER: The appeal is dismissed.