U.S. Department of Homeland Security
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Washington, DC 20529

L-4

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: JUN 08 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

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identifying data deleted to prevent clearly unwarranted invasion of personal privacy

DISCUSSION: The application for temporary resident status as a special agricultural worker was denied by the Director, Northern Regional Processing Facility. It is 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 supervisors as claimed, and therefore could not attest to anyone's employment there. The director concluded that the applicant, whose application was supported by affidavits from had not worked at KCP.

On appeal, the applicant states that his employment claim is valid, and submits numerous documents in support of such claim.

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 from attesting to the applicant's employment at KCP for approximately 115 days from May 1, 1985 to May 1, 1986, the applicant has furnished:

1. His own affidavit, dated February 7, 1996, providing some details about his work during the qualifying period and explaining that his crew leader was

2. Two affidavits from dated February 28, 1992 and February 1, 1991, accompanied by proof that was granted temporary resident status as a special agricultural worker. He stated that he worked with the applicant at KCP during the requisite period, and that and were the crew leaders who worked for stated that he had worked for them for 20 years, and that was the boss of the operation for the entire 20 years;

3. A February 27, 1992 letter from 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 the program on May 22, 1986. In an affidavit dated May 5, 1995 stated she knew nd 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. She stated much the same in a letter dated February 26, 1992. In a second affidavit, also dated May 5, 1995, provided the same information about the supervisors as that furnished by and stated that was the primary employer of field workers in the Kansas City area;

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 for Harvest America, Inc., and stated 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 a letter dated February 26, 1992 she certified that she saw the applicant on the farms in the summer months of 1985 and 1986 for more than 90 days. She also pointed out that she helped him find a job at n 1987. Also furnished was an affidavit dated May 3, 1995 from Executive Director of Harvest America, Inc., supporting the affidavits of her employe

6. A May 3, 1995 affidavit from xplaining that he had worked as a crew leader for 30 years for the enterprise known variously as nd KCP, and attesting to the applicant's employment there between May 1985 and May 1986. stated in another affidavit dated February 10, 1995 that, although for a short while continued to essentially run it. orked as crew leaders, and the workers were paid in cash. s wife, furnished two affidavits, dated February 26, 1992 and January 30, 1996, attesting to having worked with the applicant at KCP during the requisite period;

7. An affidavit from farmer explaining that in 1985 he contracted with KCP to plant and harvest corn on his acreage, and that Jim Stafos and his crew leader 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 t 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 old 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 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 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 Gilbert Rocha and Paul Ramirez worked for him at KCP.

The facility director, in denying the application, indicated that Tom Tanaka, the owner of KCP, had stated that had not worked for KCP in 1985-86. The director relied on an investigative report that indicated tha had stated that, *to the best of his knowledge*, Mr. Rocha never worked for KCP. By virtue of the fact tha 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 Stafos 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, that had worked for him at KCP. Furthermore, many reputable individuals have attested that directed the operations of KCP.

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. It appears that the regularly-employed warehouse workers at KCP were paid by check and the migrant workers who worked in the fields at KCP, and at the other farms that contracted with KCP, were paid in cash as claimed.

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 Gilbert Rocha and James Stafos did indeed work at 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.