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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

U.S. Citizenship and Immigration Services

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

IN RE: Applicant: [redacted]

JUN 22 2004

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]

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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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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 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 Mr 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).

With his application the applicant included an undated affidavit from attesting to the applicant's employment at KCP for approximately 120 days from May 1985 to May 1986. At that time the applicant also submitted an undated affidavit from providing the same information. The applicant later furnished:

1. Another affidavit from Mr dated April 12, 1993, stating "Based on the findings of the INS, my employment with Kansas City Produce was verified and found that in fact I was employed by them during the years of 1984, 1985 and 1986. In my position as supervisor, M worked under me during the period of May 1, 1985 through May 1, 1986."

2. An affidavit from spouse of stating that the applicant lived in their home while he was an employee of her husband's at KCP;

3. The applicant's own letter, dated April 4, 1994, stating that he worked at KCP and that his coworkers' applications for temporary residence had not been denied;

4. A February 9, 1993 affidavit from attorney stating that she represente the previous year in Federal Court. The affiant stated that she believed "the period was approximately 1984 through 1986 and their evidence was tha as an employee of K.C. Produce during a substantial, if not all, part of that period as a supervisor of other employees."

5. A September 29, 1993 affidavit from stating he worked with the applicant at KCP and lived with him in a space provided b He provided details about their work and their continuing friendship, and pointed out that they were paid by

6. An affidavit fro dated May 19, 1993, stating that he was the KCP employee in charge of farm payroll for the period of March to December 1985. He stated tha was a field foreman there at that time, and that the applicant worked for Mr. He also stated that all farm workers were paid in cash;

7. An affidavit dated October 19, 1992 from certifying that he and the applicant worked at KCP in 1985 and tha nd were the field foreman;

8. An affidavit dated September 28, 1992 from tating the same information as that provided b

9. Photocopies of 63 affidavits from individuals claiming to have worked at KCP during the qualifying period. One said he had worked fo and the rest attested to having worked for

10. Photocopies of numerous receiving reports of KCP, showing M name and the amounts of commodities;

Also entered into the file was a memorandum from a supervisory officer of the Immigration and Naturalization Service, indicating that the application may have been erroneously denied.

The facility director, in denying the application, indicated that owner of KCP, had stated that had not worked for KCP in 1985-86. The director relied on an investigative report that indicated that Mr. had stated that, *to the best of his knowledge*, M never worked for KCP. By virtue of the fact that Mr qualified his alleged statement by saying "to the best of my knowledge," it must be concluded that he was not sure.

The facility director also stated that the payroll records confirmed tha did not work for KCP. It is not clear that the payroll records the director reviewed included all of the field workers. Importantly, the supervisor in charge of payroll, has stated tha worked at KCP and that the applicant worked for him.

Although hundreds of aliens filed applications claiming to have worked at KCP, the applicant is one of a relatively small group of applicants who have presented such extensive individualized evidence. He is one of a very few who have submitted a follow-up affidavit fro

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 the applicant, it is concluded tha did indeed work at KCP during the qualifying period, and that the applicant did work for him as claimed. The applicant has met his burden of proof.

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