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

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: SEP 17 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: 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 special agricultural worker was denied by the District Director, Phoenix. It was reopened and denied again by the Director, Western Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained.

The district director denied the application because the applicant failed to establish the performance of *at least 90 man-days* of qualifying agricultural employment during the statutory period. The center director based his decision on unspecified adverse information.

On appeal, the applicant provided further evidence of his employment.

In order to be eligible for temporary resident status as a special agricultural worker, 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). 8 C.F.R. § 210.3(a). An applicant has the burden of proving the above by a preponderance of the evidence. 8 C.F.R. § 210.3(b).

On the application, Form I-700, the applicant claimed to have been employed as a vineyard worker for Winery from January 1985 to June 1985. In support of his claim, the applicant submitted a notarized statement from confirming the applicant worked from January 20, 1985 to June 15, 1985. It is noted that only the employment from May 2, 1985 through June 15, 1985 fell within the twelve-month period ending on May 1, 1986.

The district director denied the application because the applicant could not have worked at least 90 days in that May 2, 1985 to June 15, 1985 period.

On appeal, the applicant provided another statement from referring to the applicant's *1986* employment. This statement indicated that the applicant was employed from approximately January 6, 1986 to March 30, 1986.

The center director reopened the matter, and asked the applicant to provide actual wage and tax statements or other records to support statements. The applicant stated he would attempt to get a new document from his employer, and resubmitted a copy of the same statement furnished on appeal. However, the applicant never did furnish any additional evidence, and the center director denied the application, finding that the applicant had not overcome the "adverse information." The center director failed to address the evidence that the applicant had submitted.

There is no adverse information in this matter. Nothing in the record contradicts the statements of the applicant and While the evidence regarding the 1986 employment was not furnished initially, it is possible that the applicant and the employer believed that only the 1985 employment was relevant.

It is noted that actual pay records are not necessarily required in special agricultural worker proceedings. Farm workers were often paid in cash, and records were not always kept.

If the applicant worked a five-day week for the periods claimed, he would have accrued just over 90 man-days of employment. If he had worked a six-day week, common in agriculture, he would have accrued considerably more days.

In the absence of evidence to the contrary, it is concluded that the applicant has provided sufficient evidence of having worked at least 90 days in qualifying employment during the requisite period.

ORDER: The appeal is sustained