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U.S. Department of Homeland Security
20 Massachusetts Ave. NW, Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

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FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: MAR 0 1 2005

IN RE: Applicant: [redacted]

PETITION: 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 the matter 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, Western Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant's landscaping duties did not constitute qualifying agricultural employment.

On appeal, the applicant requested a copy of the record of proceedings. The director complied with the request on September 23, 2004.

An applicant must have engaged in qualifying agricultural employment, which has been defined as "seasonal agricultural services," for at least 90 man-days during the twelve-month period ending May 1, 1986, pursuant to 8 C.F.R. § 210.1 (h).

Section 210(h) of the Act, 8 U.S.C. 1160, defines "seasonal agricultural services" as the performance of *field work* related to the planting, cultural practices, cultivating, growing, and harvesting of fruits and vegetables of every kind *and other perishable commodities*, as defined in regulations by the Secretary of Agriculture.

According to 7 C.F.R. § 1d.7, "other perishable commodities" means those commodities which do not meet the definition of fruits or vegetables, that are produced as a result of seasonal field work, and have critical and unpredictable labor demands. "Horticultural specialties," or nursery products as defined in 7 C.F.R. § 1d.6 are included as other perishable commodities due to their reliance on seasonal and labor intensive field work.

"Field work" means any employment performed on agricultural lands for the purpose of planting, cultural practices, cultivating, growing, harvesting, drying, processing, or packing any fruits, vegetables, or other perishable commodities. 7 C.F.R. § 1d.4.

"Agricultural lands" means any land, cave, or structure, except packinghouses or canneries, used for the purpose of performing field work. 7 C.F.R. § 1d.2.

Clearly, nurseries are agricultural land because they are used for the purpose of performing field work in perishable commodities, namely horticultural specialties. Thus, it is possible for an alien who engaged in field work activities as defined above with horticultural specialties in a nursery to qualify for temporary residence, as he was engaged in field work on agricultural land. On the other hand, an alien who worked with horticultural specialties as a *landscaper* on commercial and residential properties would not qualify because such properties are not agricultural land, as they are not used for the purpose of performing field work. While the *purpose* of a nursery is the production of horticultural specialties, the same cannot be said of yards and other properties on which landscaping takes place.

The applicant, on his Form I-700 application, claimed an unspecified number of man-days employment for Camco Service Landscape performing landscaping duties from November 18, 1984 to the filing of the application on January 12, 1989.

In support of his claim, the applicant submitted a Form I-705 affidavit claiming a unspecified number of man-days planting, fertilizing, replanting, irrigating and trimming flowering plants, shrubbery, lawns, and trees for Camco in Orange County, California from 1984 to the "present."

The director concluded the applicant had performed only landscaping duties, and denied the application.

On appeal, the applicant has made no statements regarding his employment.

Although the applicant indicated during his legalization interview that, as a part of his duties, he planted fruit trees and tended them until they were replanted, there is no clear indication that the applicant engaged in qualifying nursery duties. Rather, it is concluded he performed landscaping duties on commercial and residential properties. As stated above, such commercial and residential properties are not "agricultural land," as they are not used *for the purpose of* raising perishable commodities. As such properties are not agricultural land, it cannot be held that the landscaping duties performed on them constitute "field work." For this reason, the applicant's claimed employment is non-qualifying.

Further, the applicant has not claimed any specific number of man-days of employment during the Group II eligibility period May 1, 1985 to May 1, 1986. The applicant has, therefore, failed to establish the performance of at least 90 man-days of qualifying agricultural employment during the twelve-month eligibility period ending May 1, 1986.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.