

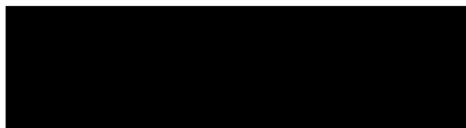
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U.S. Department of Homeland Security
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U.S. Citizenship
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FILE:



XDA-89-007-01047

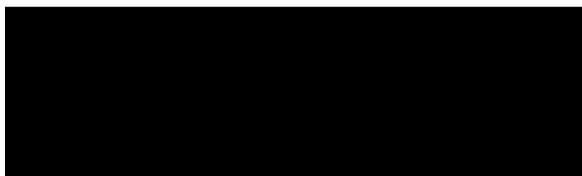
Office: TEXAS SERVICE CENTER

Date:

SEP 12 2007

IN RE:

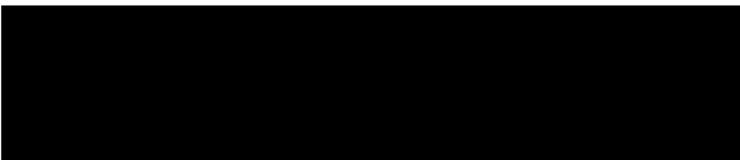
Applicant:



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:



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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application for temporary resident status as a Group 1 Special Agricultural Worker (the SAW program) was denied by the Director, Southern Service Center. The applicant appealed to the Administrative Appeals Office (AAO). The appeal was rejected by the AAO. The AAO suggested that the lateness of the appeal appeared to be a result of the director's error and, as a result, the director may choose to reopen the decision *sua sponte*. The Director, Texas Service Center, issued a Notice of Certification with a new decision to the applicant on August 15, 2007 and certified the case to the AAO for review. The decision of the director will be affirmed.

The director denied the application because the applicant failed to prove her eligibility for temporary residence as a special agricultural worker. Specifically, the number of man-days worked by the applicant fall short of the required number of man-days for the periods ending May 1, 1984, May 1, 1985 and May 1, 1986.

On appeal, the applicant explained that she had not known her case had been denied, and she asked that the appeal procedure be reconsidered.

Title 8, Code of Federal Regulations, Part 210.1(g) defines group 1 Special Agricultural Workers as:

. . . workers who have 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 on May 1, 1984, May 1, 1985, and May 1, 1986 and who have resided in the United States for six months in the aggregate in each of those twelve month periods.

In support of her application, the applicant submitted only Form I-705, Affidavit Confirming Seasonal Agricultural Employment, stating that she worked for [REDACTED] from May 1984 to August 1984 for a total of 120 man-days. The man-days worked by the applicant fall short of the required number of man-days for the periods ending May 1, 1984, May 1, 1985, and May 1, 1986. Specifically, the applicant failed to document any qualifying employment in 1985 or 1986.

In denying the application, the director explained that the man-days worked by the applicant fell short of the required number of man-days for the requisite periods. The director mistakenly stated that the applicant lacked proof of employment for the periods ending May 1, 1984 and May 1, 1986, when the applicant actually lacked proof of employment for the periods ending May 1, 1985 and May 1, 1986.

On appeal, the applicant explained that she had not known her case had been denied, and she asked that the appeal procedure be reconsidered.

In its decision on June 15, 2007, the AAO determined the appeal was untimely filed. As a result, the AAO rejected the appeal. The AAO noted that the applicant had issued a Form I-687A Change of Address Card prior to the issuance of the director's decision, but the director did not mail the Notice of Decision to the applicant's address of record. The AAO explained that, as a result of this apparent error, the director may choose to reopen the decision *sua sponte*. The director issued a Notice of

Certification with a new decision to the applicant on August 15, 2007 and certified the case to the AAO for review.

In summary, the applicant submitted documentation of qualifying employment from May 1984 to August 1984 for a total of 120 man-days. The applicant failed to submit any proof of qualifying employment for the periods ending May 1, 1985 and May 1, 1986. Pursuant to Title 8, Code of Federal Regulations, Part 210.3(b)(1), the applicant for adjustment of status has the burden of proving his or her eligibility for the benefit sought. The applicant has failed to meet this burden with respect to the SAW program. Therefore, the applicant is ineligible for adjustment to temporary resident status as a special agricultural worker.

ORDER: The decision of the director is affirmed. This decision constitutes a final notice of ineligibility.