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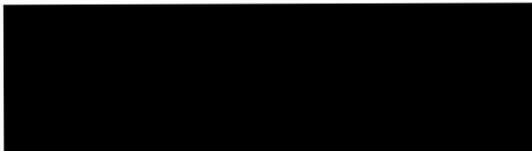
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



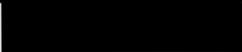
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FILE:



Office: NEBRASKA SERVICE CENTER Date: SEP 22 2008

XKA-88-158-02004

IN RE:

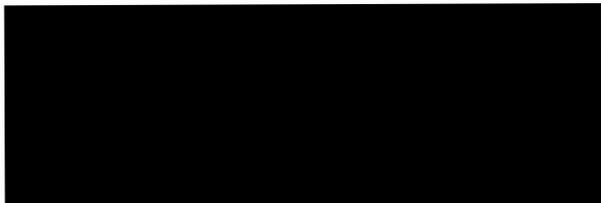
Applicant:



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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application for temporary resident status as a special agricultural worker (the SAW program), was denied by the Director, Regional Processing Facility, Lincoln, Nebraska. The applicant appealed the decision to the Administrative Appeals Office (AAO). The AAO initially summarily dismissed the appeal in a decision issued on June 25, 2008. The AAO now withdraws the initial decision in order to incorporate into the record relevant information provided by the applicant after he was granted additional time to respond. The appeal will be sustained.

The director denied the application because he found that the applicant had failed to establish as a matter of just and reasonable inference that he performed 90 man-days of qualifying agricultural labor from May 1, 1985 to May 1, 1986. The director noted that, according to payroll and employee records, the two affiants who attested to the applicant's qualifying employment were not employed by the alleged employer during the requisite period.

On appeal, the applicant stated that he went to the immigration office in El Paso, Texas and was told that his application under the SAW program was denied in March 1991. The applicant stated that he never received a letter informing him of the denial of the application. The applicant requested that he be provided with a copy of the denial notice. On May 14, 2008, the AAO issued a copy of the director's decision to the applicant's address of record and provided the applicant with 30 days in which to submit additional documentation in support of his appeal. On June 13, 2008, the applicant requested and was granted an additional 90 days to respond to the request for additional documentation. The applicant provided several affidavits, together with a copy of a Master Exhibit prepared for submission with applications under the SAW program involving K.C. Produce after meetings with the former director of the Nebraska Service Center.

In order to be eligible for the SAW program, an alien must have engaged in qualifying agricultural employment for at least 90 man-days during the twelve-month period ending May 1, 1986, and must be otherwise admissible under section 210(c) of the Act and 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 Form I-700 application, the applicant stated that he performed in excess of 90 man-days from May 1985 to December 1985 working for [REDACTED] at K.C. Produce. This included harvesting and picking vegetables. In support of his claim, the applicant submitted two Form I-705 Affidavits Confirming Seasonal Agricultural Employment. The Form I-705 signed by [REDACTED] indicates that the applicant worked for Kansas City Produce (also known as K.C. Produce or KCPI) for approximately 145 days from May 1, 1985 to December 5, 1985. This work involved harvesting and picking spinach, radishes, greens, green beans, cucumbers, squash, eggplant and turnips. At part #10, which asks the affiant's relationship to the applicant, [REDACTED] identified himself as a foreman. His signature on the form was notarized on February 7, 1992. The Form I-705 signed by [REDACTED] indicates that the applicant worked for KCPI for approximately 145 days from May 1, 1985 to December 5, 1985. This work involved harvesting and picking spinach, radishes, greens, green beans, cucumbers, squash, eggplant and turnips. At part #10, which asks the affiant's

relationship to the applicant, identified himself as an employee. His signature on the form was notarized on February 7, 1992.

In the decision issued on March 6, 1991, the director indicated that the payroll and employee records for KCPI confirmed that [REDACTED] were not employees of KCPI in 1985-1986. CIS records indicate that [REDACTED] was interviewed on March 27, 1990 at the United States Attorney's Office, Kansas City, Kansas. [REDACTED] stated that he knows [REDACTED] but, to the best of his knowledge, [REDACTED] never worked for KCPI. The record indicates that [REDACTED] did work for an individual named Jim Stafos before [REDACTED] bought KCPI from [REDACTED]. CIS records also show that an examination of KCPI employee lists and payroll records from 1985 and 1986 indicates that [REDACTED] was not employed there during those years. Based on this information, the director found that the applicant had failed to establish as a matter of just and reasonable inference that he performed 90 man-days of qualifying agricultural labor from May 1, 1985 to May 1, 1986 and denied the application.

On the current appeal, the applicant provides sufficient additional evidence to overcome the director's decision. The applicant provides portions of the transcript for the *United States of America vs. Isaura Rocha a/k/a Isaura Galvan*, Criminal Action No. [REDACTED] (Kan. Dist. October 7 & 8, 1991). The transcript includes the testimony of [REDACTED], a field foreman at KCPI who was in charge of the farm payroll. [REDACTED] worked at KCPI from April to December 1985 and March to June 1986. His responsibilities included hiring and firing migrant farm workers who worked in the field. He stated that in addition to himself, there were approximately seven or eight other field foremen who supervised between 40 and 60 workers at any given time. He stated that he and [REDACTED] were responsible for supervising 150 to 200 workers at a time. He estimated that from the beginning to the end of the season in 1985, there were from 600 to 1000 field workers at KCPI. [REDACTED] indicated that KCPI payroll procedures involved [REDACTED] writing a check, [REDACTED] signing the check, and [REDACTED] using the funds from the check to pay the workers in cash. [REDACTED] indicated that records of field workers paid in cash were destroyed. [REDACTED] (Nov. 7 & 8, 1991). This testimony tends to show that not all individuals who performed qualifying employment for KCPI during the requisite period are documented in company records.

The additional evidence also includes the sworn statement from [REDACTED] from February 6, 1991. In his testimony, [REDACTED] stated that he does not "know too much about [REDACTED]. I see where he worked for us there, but I don't remember him." Interrogator [REDACTED] asked Mr. [REDACTED] "I have shown you some payroll records where [REDACTED] may have worked for [KCPI], but you don't have any independent recollection?" [REDACTED] stated, "No." Depo. [REDACTED] 4:17-25. This excerpt tends to show that records exist indicating that [REDACTED] was employed by KCPI. It also shows that [REDACTED] did not contradict evidence indicating [REDACTED] was employed by KCPI when presented with this evidence, although he did not remember [REDACTED]

The applicant provided an affidavit from [REDACTED] notarized on May 3, 1995. The affiant stated that she had been the Area Director for the Kansas City, Kansas field office of Harvest

America Corporation since 1981. In this capacity she conducted outreach services by making field visits to register workers at their place of employment, including KCPI. The affiant stated that she knew [REDACTED] as a worker with supervisory responsibilities for employees of KCPI. She stated that, during the SAW period, she observed [REDACTED] and other supervisory workers on the premises of KCPI. She stated that these supervisory workers, including [REDACTED] were familiar with the migrant and seasonal farm workers employed by the business. The affiant also stated that after Mr. [REDACTED] became the owner of KCPI, [REDACTED] continued to exercise direct control over the crew leaders, and she did not recall ever seeing [REDACTED] in the fields. This affidavit tends to show that [REDACTED] had supervisory responsibilities at KCPI during the requisite period and would be in a position to confirm the employment of workers during that period. In addition, this affidavit tends to suggest that [REDACTED] was not familiar with all employees at KCPI during the requisite period.

The applicant also provided an affidavit from [REDACTED] notarized on May 5, 1995. The affiant stated that she served as the Nurse Coordinator of the Migrant Health program from 1978 until June 1994. In this capacity, the affiant conducted outreach at KCPI. From her field visits, the affiant knew [REDACTED] as long-standing workers at KCPI. She stated that, during the period from May 1, 1985 to May 1, 1986, she observed both individuals in the fields at KCPI supervising migrant and seasonal farm workers. This affidavit tends to show that [REDACTED] and [REDACTED] were employed by KCPI during the requisite period.

The documents provided by the applicant on the current appeal overcome the evidence in CIS records that had appeared to undermine the documents from [REDACTED] in support of the applicant's claim. Overall, the evidence in the record tends to show that [REDACTED] were employed by KCPI during the requisite period and, as a result, were in positions to confirm the employment of field workers during that time. The I-705 forms provided by [REDACTED] and [REDACTED] support the applicant's claim to have performed 90 man-days of qualifying agricultural labor from May 1, 1985 to May 1, 1986. The record contains no evidence tending to contradict the applicant's claim to have performed the requisite qualifying employment with KCPI.

The inference to be drawn from the documentation shall depend on the extent of the documentation, its credibility and amenability to verification. If an applicant establishes that he has in fact performed the requisite qualifying agricultural employment by producing sufficient evidence to show the extent of that employment as a matter of just and reasonable inference, the burden then shifts to the Service to disprove the applicant's evidence by showing that the inference drawn from the evidence is not reasonable. 8 C.F.R. § 210.3(b)(1).

There is no mandatory type of documentation required with respect to the applicant's burden of proof; however, the documentation must be credible. All documents submitted must have an appearance of reliability, i.e., if the documents appear to have been forged, or otherwise deceitfully created or obtained, the documents are not credible... if the Service has not obtained information which would refute the applicant's evidence, the applicant satisfies the requirements for the SAW program with

respect to the work eligibility criteria. *United Farm Workers (AFL-CIO) v. INS*, Civil No. S-87-1064-JFM (E.D. Cal.).

The record contains no sworn statement, admission, record of conviction or other indication which would lead to a conclusion that the applicant did not work as claimed. The applicant's additional materials are found to adequately explain the absence of [REDACTED] name in KCPI records. The materials overcome [REDACTED] earlier statements questioning [REDACTED] claims of employment with KCPI. The materials also contain evidence that tends to show that Mr. [REDACTED] were in fact employed by KCPI during the requisite period. The statements of [REDACTED] on the I-705 forms are sufficient to show that the applicant performed the requisite number of man-days of qualifying employment during the requisite employment period.

The applicant is found to have proven by a preponderance of the evidence that he engaged in qualifying agricultural employment for at least 90 man-days during the 12-month period ending May 1, 1986. Consequently, the applicant is eligible for adjustment to temporary resident status as a special agricultural worker.

ORDER: The appeal is sustained. The director shall complete the adjudication of the Form I-700.