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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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[Redacted]

FILE: [Redacted]
XES 88 076 02012

Office: LOS ANGELES

Date: SEP 26 2008

IN RE: Applicant:

[Redacted]

APPLICATION: Application for Temporary Resident Status under Section 210 of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1160

ON BEHALF OF APPLICANT:

[Redacted]

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 "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: This matter is an application for temporary resident status as a special agricultural worker that was denied by the Director, Western Service Center and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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 applicant put forth a new claim of employment for [REDACTED] at Clover Leaf Farms in Carlsbad, California from May 1, 1985 to May 1, 1986 as well as an explanation as to why he had not advanced this claim at an earlier point in these proceedings. The applicant submitted a Form I-705 affidavit and tax records in support of his new claim of employment.

The record shows that the Service complied with the applicant's request and mailed a copy of the record to the applicant on May 30, 1995.

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, and must be otherwise admissible under section 210(c) of the Immigration and Nationality Act (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).

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 the regulation at 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 the regulation at 7 C.F.R. § 1d.6 are included as other perishable commodities due to their reliance on seasonal and labor intensive field work.

"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.

"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

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 applicant 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 applicant 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.

On the Form I-700 application, the applicant claimed 123 man-days of employment landscaping for [REDACTED] from June 1985 to November 1985.

In support of the claim, the applicant submitted a corresponding Form I-705 affidavit signed by [REDACTED]. At part #10 of the Form I-705 affidavit where affiants were asked to specify their relationship with the applicant, [REDACTED] indicated that he was the owner of a landscape company.

On October 26, 1988, a Service officer contacted the telephone number listed by [REDACTED] on the Form I-705 affidavit and spoke with [REDACTED]. [REDACTED] confirmed that the applicant had worked 123 days for her husband's company from June 1985 to November 1985. [REDACTED] informed the Service officer that her husband's company landscaped new construction sites and performed landscape maintenance on existing properties but did not have any nursery operations.

The director concluded the applicant had performed only landscaping duties, and denied the application on April 1, 1993.

On appeal, the applicant put forth a new claim of employment for [REDACTED] at Clover Leaf Farms in Carlsbad, California from May 1, 1985 to May 1, 1986. The applicant indicated that he had not advanced this claim at an earlier point in these proceedings because [REDACTED] was initially reluctant to provide all of his employees with supporting documentation to reflect work they had performed. The applicant stated that [REDACTED] knew him by a variation of his full and complete name during that period he employed the applicant.

The applicant submitted a Form I-705 affidavit and three separate California DE-3 Tax Returns all of which refer to the applicant by the same variant in name as he had noted. The Form I-705 affidavit also has a photograph of the applicant attached to it. On the Form I-705 affidavit, Mr. [REDACTED] testified that he employed the applicant for more than 90 man-days cultivating flowers at Clover Leaf Farm in San Diego County, California from May 1, 1985 to May 1, 1986.

The supporting documents submitted by the applicant and the explanation put forth by him on appeal are sufficiently credible to establish that he performed at least 90 days of qualifying employment cultivating flowers, a horticultural specialty, for [REDACTED] on agricultural lands at Clover Leaf Farm during the eligibility period.

Generally, the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility, and amenability to verification. 8 C.F.R. § 210.3(b)(1). Evidence submitted by an applicant will have its sufficiency judged according to its probative value and credibility. 8 C.F.R. § 210.3(b)(2). Personal testimony by an applicant which is not corroborated, in whole or in part, by other credible evidence (including testimony by persons other than the applicant) will not serve to meet an applicant's burden of proof. 8 C.F.R. § 210.3(b)(3).

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 [now CIS] has not obtained information which would refute the applicant's evidence, the applicant satisfies the requirements for the SAW [special agricultural worker] program with respect to the work eligibility criteria. *United Farm Workers (AFL CIO) v. INS*, Civil No. S 87 1064 JFM (E.D. Cal. June 15, 1989).

The applicant has submitted sufficient evidence on appeal to establish as a matter of just and reasonable inference the performance of at least 90 man-days of qualifying agricultural employment during the twelve month statutory period ending May 1, 1986. Consequently, the applicant has overcome the grounds cited by the district director as the basis for denial.

Accordingly, the applicant's appeal will be sustained. The district director shall continue the adjudication of the application for temporary resident status as a special agricultural worker.

ORDER: The appeal is sustained.