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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

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FILE:

XFR-88-217-2066

Office: CALIFORNIA SERVICE CENTER

Date: JAN 05 2010

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:

SELF-REPRESENTED

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.

Perry Rhew  
Chief, 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). The appeal will be dismissed.

The director denied the application for Special Agricultural Worker Group 2 status finding that the applicant failed to establish the performance of at least 90 man-days of qualifying agricultural employment during the 12-month period ending on May 1, 1986. This determination was based on adverse information regarding the applicant's claim of employment for [REDACTED] and [REDACTED].

The applicant appealed the director's decision and the AAO remanded pending the applicant's receipt of the record of proceedings. The record indicates that the applicant was sent a complete copy of the record of proceedings on May 13, 2009.<sup>1</sup> On appeal, the applicant submitted a brief in which he asserts that the director erroneously denied the original application. The applicant asserts that he in fact, worked in excess of 90 man-days during the twelve month period ending May 1, 1986. In support of his assertion, the applicant points to his own affidavit, and the affidavit of [REDACTED].

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 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).

The AAO has review both of these affidavits. [REDACTED] indicates that he and the applicant worked for [REDACTED] for approximately 100 days picking strawberries, raspberries and pumpkins from May until August 1985. His testimony is inconsistent with testimony provided by [REDACTED] and [REDACTED]. As stated in the Notice of Intent to Deny (NOID) issued on April 24, 1992, [REDACTED] and [REDACTED] have made declarations to the United States Attorney's Office in connection with a plea agreement. Both indicate that they employed approximately 30 people for 90 days or more from May 1, 1985 until May 1, 1986. They have submitted a list of these people's names and the applicant's name does not appear on the list. The letter from [REDACTED] and the applicant's own testimony are insufficient to overcome this adverse information.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he engaged in qualifying agricultural employment for at least 90 man-days during the twelve-month period ending May 1, 1986. The applicant is, therefore, ineligible for temporary resident status as a special agricultural worker under section 210A of the Act on this basis.

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<sup>1</sup> NRC 2008012479

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