



U.S. Citizenship
and Immigration
Services

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FILE:

Office: CALIFORNIA SERVICE CENTER

Date: 03/04/2016

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. 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.

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. The matter is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded for further consideration.

The director denied the application because the applicant's work with [REDACTED] was considered non-qualifying.

A Group 2 special agricultural worker is a worker who during the twelve-month period ending on May 1, 1986, has performed at least 90 man-days in the aggregate of qualifying agricultural employment in the United States. 8 C.F.R. § 210.1(h)

An applicant for temporary resident status under section 210 of the Act "has the burden of proving by a preponderance of the evidence that he or she has worked the requisite number of man-days, is admissible to the United States... and is otherwise eligible for adjustment of status under this section." 8 C.F.R. § 210.3(b). When something is to be established by a preponderance of evidence it is sufficient that the proof only establish that it is probably true. See generally, McCormick, Evidence sec. 339 (2d ed. 1972).

On the Form I-700 application, the applicant claimed to have been employed for 315 man-days, harvesting [REDACTED] from May 10, 1985 to May 15, 1986 in Santa Bernardino County, California.

In support of the claim, the applicant submitted a corresponding Form I-705 affidavit and a separate form employment verification letter, both of which were purportedly signed by [REDACTED]

On October 29, 1990, the application was denied because the applicant's claimed employment with alfalfa was considered non-qualifying. On appeal, the applicant submitted a letter signed by [REDACTED] who stated that at the time he filled out the applicant's documentation he was not certain exactly how to proceed therefore, he put [REDACTED] as the only crop the applicant worked with. Mr. [REDACTED] further stated that the applicant worked approximately 60 days picking grapes, 30 days picking oranges, 60 days picking lemons and the rest of the 315 days working with [REDACTED]

[REDACTED] owner of [REDACTED] and his wife have testified that the ranch cultivated grapes, oranges and lemons in addition to the cultivation of [REDACTED]. No question has been raised concerning the applicant's apparent 315 days employment at the ranch from May 10, 1985 to May 15, 1986. Therefore, it is concluded that the applicant probably worked with the other crops during that 315 day period. Mr. [REDACTED] statement as to why the other crops were not initially mentioned appears credible. Therefore, it is concluded that the applicant worked 150 days harvesting fruit. The documentation submitted by the applicant may be accorded substantial evidentiary weight. It is, therefore, concluded that the applicant performed the requisite qualifying agricultural employment during the twelve-month statutory period ending May 1, 1986.

While it appears that the applicant may have performed qualifying agricultural employment, a Service background investigation revealed that the applicant has criminal convictions which may preclude him from qualifying for the benefits sought. The director will consider the applicant's criminal record and make a determination as to the applicant's eligibility based on those findings.

ORDER: The case is remanded for action and consideration consistent with the above.