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U.S. Citizenship
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Services

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FILE:

XPS 90-602-00085

Office: TEXAS SERVICE CENTER

Date: JUL 18 2006

IN RE:

Applicant:

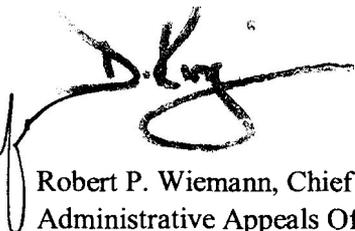
APPLICATION:

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.


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for temporary resident status as a special agricultural worker was denied by the Director, Southern Regional Processing Facility. The application was then reopened and denied again by the Director, Southern Service Center. The application was again reopened and denied by the Director, Texas Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The directors denied the application because the applicant's claimed employment with dairy cows was considered non-qualifying employment.

On his initial appeal, the applicant stated that he was working for [REDACTED] at the time. He furnished a brief letter from Mr. [REDACTED] in support of his claim indicating employment from June 1985 through October 1985. Later, the applicant reaffirmed his employment claim at [REDACTED]

An applicant must have engaged in qualifying agricultural employment, which has been defined as "seasonal agricultural services," for at least 90 man-days during the twelve-month period ending May 1, 1986, pursuant to 8 C.F.R. § 210.1 (h).

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. Livestock is not included in "other perishable commodities" at 7 C.F.R. § Id.7.

On the application, Form I-700, the applicant claimed 432 man-days of employment harvesting, plowing and sowing wheat for [REDACTED] from January 1986 on. In support of his claim, the applicant submitted a corresponding Form I-705 affidavit from Mr. [REDACTED] in a subsequent interview taken by a Service officer, the applicant stated that his primary duties while working for Mr. [REDACTED] were to milk cows. He stated that he did not work out in the field. The applicant also stated that he sometimes fed the chickens and the hogs.

On appeal, in an affidavit dated October 27, 2005, the applicant affirms that he milked cows and also seeded and harvested the food crops for the animals. The applicant states that he seeded wheat, barley and Johnson grass which were used to feed the animals. He makes no statements regarding the number of man-days he worked seeding and harvesting. In a letter dated November 14, 2005, [REDACTED] corroborates the applicant's statements made in his affidavit. Mr. [REDACTED] does not address the specific number of man-days the applicant performed his various duties.

The applicant's employment milking cows is non-qualifying since it does not involve working with fruits, vegetables or other perishable commodities. Although the applicant and Mr. [REDACTED] assert the applicant performed other duties, the applicant clearly stated at his interview that he did not work in the field. Further, neither the applicant nor Mr. [REDACTED] specify how much time the applicant purportedly engaged in qualifying duties. Therefore, it cannot be found that the applicant performed qualifying duties for 90 man-days at [REDACTED]

An applicant raises serious questions of credibility when asserting an entirely new claim to eligibility on appeal. In such instances, the Service may require credible evidence to support the new claim as well as a complete plausible explanation concerning the applicant's failure to advance this claim initially. The instructions to the

application do not encourage an applicant to limit his claim; rather they encourage the applicant to list multiple claims as they instruct him to show the most recent employment first.

The applicant's claim to have been employed by [REDACTED] was first brought to the Service's attention at the appellate level. The applicant has not reiterated this claim since 1988. The applicant offers no account as to why this entirely new claim to eligibility was not advanced on the application or at the interview. The very purpose of the Form I-700 application is to allow the applicant to claim the qualifying agricultural employment which entitles him to the benefits of status as a special agricultural worker.

Larger issues of credibility arise when an applicant claims employment which is called into question, and later attempts to establish eligibility with a different employer, heretofore never mentioned to the Service. For this reason, the applicant's new claim of employment for [REDACTED] will not serve to fulfill the qualification requirements necessary for status as a special agricultural worker.

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