



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



PUBLIC COPY

APR 19 2007

FILE:



XSO 88 142 1070

Office: California Service Center

Date:

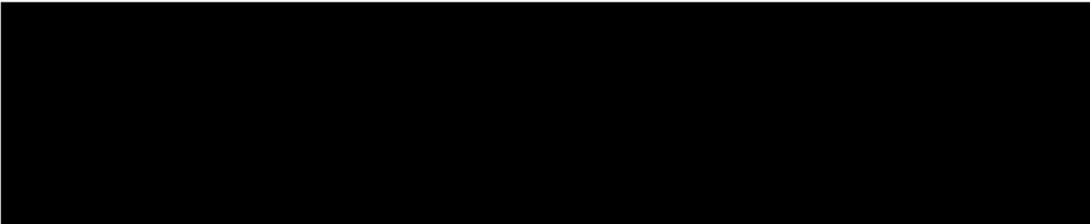
IN RE:

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. All documents have been returned to the office that originally decided 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 District Director, San Francisco. It was then reopened and denied by the Director, Western Regional Processing Facility, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The directors denied the application because the applicant failed to establish that he performed seasonal agricultural services for at least 90 days during the 12-month period ending on May 1, 1986.

On appeal, the applicant claims an employee of the Immigration and Naturalization Service (INS, now Citizenship and Immigration Services, or CIS) wrongly advised him to apply for special agricultural worker status under section 210 of the Act rather than amnesty (legalization) under section 245A. Counsel asserts CIS should, therefore, be estopped from denying the application. Counsel encourages CIS to convert the special agricultural worker application to a legalization application.

A Group 1 special agricultural worker is a worker who has performed qualifying agricultural employment in the United States for at least 90 man-days in the aggregate in each of the twelve-month periods ending May 1, 1984, 1985, and 1986, and has resided in the United States for six months in the aggregate in each of those twelve-month periods. 8 C.F.R. § 210.1(f)

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(g)

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, provided he is otherwise admissible under section 210(c) of the Act and is not ineligible under 8 C.F.R. § 210.3(d).

On the Form I-700 special agricultural worker application, the applicant claimed to have worked with lemons for ██████████ in Santa Ana, California. He did not specify when, or how many days, he worked for that concern. He provided a pay statement from ██████████, showing he worked in the pay period ending on July 25, 1982.

On July 15, 1988 the applicant was interviewed by an immigration officer regarding his special agricultural worker claim. According to the officer's notes, the applicant explained that his employment for ██████████ ended in 1984, and that this was the extent of his agricultural employment. The District Director, San Francisco, denied the special agricultural worker application on that date because the applicant had failed to establish the performance of at least 90 man-days of seasonal agricultural services during the twelve month period ending May 1, 1986. The applicant did not appeal, but did request reopening, based on the assertion that the INS employee erroneously advised him to apply for the agricultural program.

The facility director later reopened the matter, and denied the application, again because the applicant did not work in agriculture during the requisite period. The director informed the applicant that there was no statutory provision to convert his agricultural application into a legalization application.

On appeal the applicant claims he went to his local immigration office prior to filing his application and told the INS employee that he had lived in the United States since 1979 and had worked in the fields until 1984. He states the employee directed him to the special agricultural worker applications, and did not advise him

that he could apply for legalization, which requires residence in the United States since January 1, 1982. While the applicant asserts the INS employee improperly advised him, what may or may not have transpired between the applicant and the employee can be neither confirmed nor rebutted from the record. Even if the employee did advise him to file the agricultural application, it may or may not have been clear to the employee that the applicant's farm employment ceased in 1984. It is not clear that the employee erred, and it is very doubtful that he or she engaged in deliberate misconduct, which, as counsel states, is a requirement for estoppel. Therefore, it cannot be concluded that CIS should be estopped from adjudicating the agricultural worker application that is before it.

The applicant has requested that he be allowed to be considered for temporary resident status under the legalization provisions of the Act. Congress provided a 12-month application period for those seeking benefits under the legalization program. Section 245A(a)(1)(A) of the Act. This designated eligibility period extended from May 5, 1987, to May 4, 1988. The statute's legislative history indicates that Congress intended aliens to come forward during this eligibility period because, as in the words of United States [REDACTED] "this is the first call and the last call." 132 Cong. Rec. S16,888 (daily ed. Oct. 17, 1986). It is stipulated the application must have been properly filed on Form I-687, within the aforementioned filing period, at a local legalization office or a qualified designated entity. 8 C.F.R. § 245a.2(e). As such, the applicant's request for the benefit of temporary residence under section 245A of the Act cannot be accepted.

The applicant applied for specific benefits as a special agricultural worker. His application has been adjudicated under section 210 of the Act. In accordance with statute, the applicant has been found to be ineligible for temporary resident status as a special agricultural worker.

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