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**U.S. Citizenship
and Immigration
Services**

LL

FILE:

Office: CALIFORNIA SERVICE CENTER

Date: MAY 03 2007

XES 88 158 03008

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. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, 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 remanded by Legalization Appeals Unit (LAU), now the Administrative Appeals Office (AAO). The matter is now before the AAO on appeal. The case will be remanded once again for further consideration and action.

On April 20, 1992, the director issued a Notice of Intent to Deny, advising the applicant that on August 6, 1988, he gave a sworn statement in El Paso, Texas, admitting that his first entry into the United States was on March 7, 1986. The director noted that based on the sworn statement, the applicant's claim to have performed at least 90 days of seasonal agricultural employment in the United States during the qualifying period could not be considered credible. The applicant, in response, asserted that he had never worked, visited or been interviewed in El Paso, Texas. The applicant reaffirmed his employment claim in San Diego County, California. On June 26, 1992, the director denied the application because the documentation submitted did not satisfy the applicant's burden of proof of having performed qualifying agricultural employment during the requisite period.

On appeal, the applicant puts forth new employment from several employers during the qualifying period. The applicant asserts, "[y]ou also have a written statement from me, stating that I never have been nor have I ever worked in El Paso, Texas."

On April 1, 1999, the LAU remanded the case for inclusion of the applicant's sworn statement. The remand notice indicated that if the evidence used as the basis for the denial of the application could not be located, a new decision must be rendered. The director forwarded the record along with the applicant's prior A-file back to the AAO for review. The director noted that the sworn statement had been included in the prior A-file.

A review of the prior A-file neither contains a sworn statement dated August 6, 1988 nor any information described by the director in his Notice of Intent to Deny. The record does contain a Form I-213, Record of Deportable Alien dated August 25, 1987, which contradicts the applicant's claim to have performed agricultural employment during the qualifying period. This information, however, was not mentioned by the director in his Notice of Intent to Deny.

Accordingly, the case will be remanded for the purpose of including the sworn statement executed on August 6, 1988. Once again, if said statement cannot be located, a notice of intent shall be issued, which addresses the information contained in the Form I-213 as well as the additional employment claims put forth on appeal before a new Notice of Decision is rendered. 8 C.F.R. § 103.2(b)(16)(i). The new decision, if adverse, may be certified to this office for review.

ORDER: This matter is remanded for further action and consideration pursuant to the above.