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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS2090
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U.S. Citizenship
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Services

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FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: **MAR 30 2009**
XID-88-019-01288

IN RE: Applicant: [Redacted]

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.


John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The application for temporary resident status as a special agricultural worker was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The application was initially denied because the applicant failed to demonstrate that he had performed at least 90 man-days of qualifying agricultural employment during the 12-month period ending May 1, 1986. The director denied the application, and the applicant appealed. The AAO remanded upon the request of the director. On remand, the director fulfilled the applicant's request for information under the Freedom of Information Act (FOIA), and, on March 11, 1993, sent the applicant a letter which indicated that his appeal was still pending and that United States Citizenship and Immigration Services (USCIS) was reopening his case for entry of a new decision, and returned the record to the AAO for resolution of the appeal. The AAO remanded for the director to write a full Notice of Decision (NOD) which addresses the evidence, since, one was not included in the file. Accordingly, on November 1, 2004, the director issued a full decision which addressed all of the evidence included in the record of proceeding. The application was then forwarded to the AAO for final resolution. The record is void of any additional evidence or information by the applicant in response to the second NOD.

As stated by the director in the second NOD, issued November 1, 2004, the applicant submitted an I-700 on September 28, 1987, in which he asserted that he was eligible for temporary because he had performed 170 man-days of agricultural work from December 1985 until June 1986 picking lemons for [REDACTED]. However, the documentation submitted by the applicant, including a Form I-705 affidavit of employment, indicates that the applicant was employed by [REDACTED], former owner of [REDACTED] now doing business as [REDACTED], for 252 man-days during March 16, 1987 until July 3, 1987 under the name [REDACTED]. Additionally, the applicant submitted a letter from [REDACTED] that states that the applicant worked for them from 1986 until 1987 under the name [REDACTED].

In cases where an applicant claims to have met any of the eligibility criteria under an assumed name, the applicant has the burden of proving that the applicant was in fact the person who used that name. The applicant's true identity is established pursuant to the requirements of paragraph (b)(4)(1) and (ii) of this section. The assumed name must appear in the documentation provided by the applicant to establish eligibility. To meet the requirement of this paragraph, documentation must be submitted to prove the common identity, i.e., that the assumed name was in fact used by the applicant. 8 C.F.R. § 245a.4(b)(4)(iii). In this case, the applicant has failed to submit any evidence that he was in fact the person using the names [REDACTED] or [REDACTED]. Accordingly, he has failed to establish his eligibility for the benefit sought.

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 applicant has failed to establish credibly the performance of at least 90 man-days of qualifying agricultural employment during the twelve-month statutory period ending May 1, 1986. Consequently, the applicant is ineligible for adjustment to temporary resident status as a special agricultural worker.

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