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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529 - 2090

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

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[REDACTED]

FILE:

[REDACTED]

Office: CIUDAD JUAREZ

Date:

JUN 24 2011

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:

[REDACTED]

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.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application for temporary resident status as a special agricultural worker was denied by the director of the Texas Service Center. The decision is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded for further consideration and action.¹

The record reveals that the application for temporary resident status as a special agricultural worker was denied on May 30, 1991, because the applicant failed to submit documents, namely, two photographs requested to establish his identity. An applicant for temporary resident status must present documents, among which are included photographs. See 8 C.F.R. § 210.3(c).

On appeal, the applicant has submitted two photographs. The applicant has overcome the single documentary deficiency stated by the director. As the applicant overcame the single documentary deficiency stated by the director, the case should be fully adjudicated on its merits. The case will be remanded for the purpose of a new decision.

In order to be eligible for temporary resident status as a special agricultural worker, an alien must establish: he engaged in qualifying agricultural employment for at least 90 man days during the twelve month period ending May 1, 1986; he is otherwise admissible under the provisions of section 210(c) of the Act; and is not ineligible under 8 C.F.R. 210.3(d). 8 C.F.R. § 210.3(a).

The issue to be addressed in this proceeding is whether the applicant established he is admissible. The alien has the burden of proving by a preponderance of evidence that he is admissible to the United States under the provisions of section 210(c) of the Immigration and Nationality Act (Act), and is otherwise eligible for adjustment of status under this section. 8 C.F.R. § 210.3(b)(1). The record shows that the applicant was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(b)(I)(ii), for having been unlawfully present for more than one year and seeking readmission within 10 years of his last departure. The applicant was also found to be inadmissible under section 212(a)(9)(C) of the Act, 8 U.S.C. § 1182(a)(9)(C), for having been ordered removed under section 235(b)(1) or section 240 and entering the United States without being admitted.² The record further shows that the applicant was found to be inadmissible

¹ This case is being remanded to Ciudad Juarez since the applicant is currently residing in Mexico, having been deported there on or about June 18, 2008.

² The record reveals that the applicant has stated that he entered the United States without inspection in 1977. He asserts that he remained in the United States until approximately 1988, and he reentered the country without inspection in the same year. The applicant departed the United States on an unknown date, and then reentered without inspection on or about November 8, 1993. On November 11, 1993, the applicant was placed in deportation proceedings. On November 12, 1993, the applicant was convicted of illegal entry into the United States under 8 U.S.C. § 1325, for which he was sentenced to 60 days imprisonment. On January 7, 1994, the applicant was ordered deported, and was, in fact, deported to Mexico. The applicant states that he subsequently reentered the United States in December 1997. On December 4, 2002, at the time of his interview as a beneficiary on a Form I-130, application for alien relative, filed by his son, the applicant's prior order of removal was reinstated, and he was removed to Mexico on December 20, 2002. The applicant reentered the United States without inspection on April 4, 2008. He was apprehended and removed to Mexico on April 9, 2008. On May 3, 2008, the applicant attempted to reenter the United States by presenting a Form I-551, lawful permanent resident card that he purchased from another individual. On June 18, 2008, the applicant was convicted of illegally reentering the United States under 8 U.S.C. § 1326, for which he was sentenced to his time served in prison. The applicant was returned to Mexico. However, United States Citizenship & Immigration Services (USCIS) has designated applicants for temporary resident status under section 245A of the Act, including applicants with pending I-700 applications, to be in a period of authorized stay pending the final adjudication of their application, including any

under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure admission into the United States by willful misrepresentation.

Certain grounds of inadmissibility may be waived pursuant to section 210(c)(2)(B)(i) of the Act, 8 C.F.R. § 210.3(e), by filing a Form I-690, application for waiver of grounds of inadmissibility. *See* 8 C.F.R. § 210.3(e)(2). The waiver may be granted in the discretion of the Secretary of Homeland Security, if granting the waiver will serve humanitarian purposes, assure family unity, or if granting the waiver is in the public interest. *See id.*

Accordingly, the case will be remanded for the purpose of a new decision pursuant to the above. The director will allow the applicant the opportunity to file a Form I-690, application for a waiver of grounds of inadmissibility, with supporting documentation, and then the director shall adjudicate the Form I-690. In the event of an adverse decision by the director, the applicant will be permitted to file an appeal without a fee.

ORDER: The case will be remanded for further consideration and action.