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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS2090
20 Massachusetts Ave., N.W.
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**

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Date: **MAY 04 2011**

Office: California Service Center



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. 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.

Elizabeth McCormack

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 Escondido Legalization Office, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application, finding the applicant failed to establish the performance of at least 90 man-days of *qualifying seasonal agricultural employment* during the eligibility period.

On appeal, the applicant asserts that he does not consider the work he did to be landscaping work.

In order to be eligible for temporary resident status as a special agricultural worker, an alien must have engaged in *qualifying seasonal 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).

On the Form I-700 application, the applicant claimed to have worked 94 man-days pruning and planting trees for Pete's Tree Service from May 1985 to January 1986. In support of the claim, the applicant submitted a corresponding Form I-705 affidavit and a separate employment statement, signed by Peter Guerrero, indicating the applicant planted, transplanted, and pruned trees, including, but not limited to, fruit trees.

"Seasonal agricultural services" means the performance of *field work* relating to planting, cultural practices, cultivating, growing and harvesting fruits and vegetables of every kind and other perishable commodities as defined by the Secretary of Agriculture. *"Field work"* means any employment performed on agricultural lands for the purpose of planting, cultural practices, cultivating, growing, harvesting, drying, processing, or packing any fruits, vegetables or other perishable commodities. These activities have to be performed on agricultural lands. 7 C.F.R. § 1d.4

In the instant case, the applicant performed labor, planting trees and shrubs, at peoples' homes. He did not perform labor on agricultural lands; hence, he did not perform qualifying seasonal agricultural services.

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.