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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

LA

FILE:

Office: CALIFORNIA SERVICE CENTER

Date:

Aug 6 2013

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. The file has been returned to the service center that processed 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, Director  
Administrative Appeals Office

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

The director denied the application because the applicant's landscaping duties did not constitute qualifying agricultural employment.

On appeal, the applicant stated that he had other employment during the qualifying period and submitted additional evidence.

An applicant must have engaged in qualifying agricultural employment, which has been defined as "seasonal agricultural services," for at least 90 man-days during the twelve-month period ending May 1, 1986, pursuant to 8 C.F.R. § 210.1 (h).

Section 210(h) of the Act, 8 U.S.C. 1160, defines "seasonal agricultural services" as the performance of field work related to the planting, cultural practices, cultivating, growing, and harvesting of fruits and vegetables of every kind and other perishable commodities, as defined in regulations by the Secretary of Agriculture.

According to 7 C.F.R. § 1d.7, "other perishable commodities" means those commodities which do not meet the definition of fruits or vegetables, that are produced as a result of seasonal field work, and have critical and unpredictable labor demands. "Horticultural specialties," or nursery products as defined in 7 C.F.R. 1d.6 are included as other perishable commodities due to their reliance on seasonal and labor intensive field work.

"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. 7 C.F.R. § 1d.4

"Agricultural lands" means any land, cave, or structure, except packinghouses or canneries, used for the purpose of performing field work. 7 C.F.R. § 1d.2.

Clearly, nurseries are agricultural land because they are used for the purpose of performing field work in perishable commodities, namely horticultural specialties. Thus, it is possible for an alien who engaged in field work activities as defined above with horticultural specialties in a nursery to qualify for temporary residence, as he was engaged in field work on agricultural land. On the other hand, an alien who worked with horticultural specialties as a landscaper on commercial and residential properties would not qualify because such properties are not agricultural land, as they are not used for the purpose of performing field work. While the purpose of a nursery is the production of horticultural specialties, the same cannot be said of yards and other properties on which landscaping takes place.

The applicant, on his Form I-700 application, claimed 200 days employment for [REDACTED] transplanting, feeding, watering and harvesting pine and citrus trees in San Bernardino, California from May 1985 to May 1986.

In support of his claim, the applicant submitted a Form I-705 affidavit and a separate employment letter, both signed by [REDACTED]

On April 5, 1991, the director sent the applicant a notice advising him that landscaping was not qualifying employment, but that nursery work was. The director gave the applicant a chance to clarify his duties and provide further evidence. The applicant did not respond to the notice.

The director concluded the applicant had performed only landscaping duties, and denied the application on December 23, 1991.

On appeal, the applicant stated that he had other employment during the qualifying period, but that he could not contact them at the time he filed his application. The applicant stated that fortunately he was able to recently contact one of his other employers and that he was submitting a Form I-705 affidavit from that employer.

The descriptive letterhead on the employment verification letter submitted in support of the claimed employment for [REDACTED] describes the firm's operations as "Tree Movers." There is no clear indication that the applicant engaged in qualifying nursery duties. Rather, it is concluded he performed landscaping duties on commercial and residential properties belonging to clients of Landscaping. As stated above, such commercial and residential properties are not "agricultural land," as they are not used for the purpose of raising perishable commodities. As such properties are not agricultural land, it cannot be held that the landscaping duties performed on them constitute "field work."

An applicant raises questions of credibility when asserting an entirely new claim to eligibility on appeal. In such instances, the Service may require credible evidence to support the new claim as well as a complete plausible explanation concerning the applicant's failure to advance this claim initially. The instructions to the application do not encourage an applicant to limit his claim; rather they encourage the applicant to list multiple claims as they instruct him to show the most recent employment first.

The applicant's claim to have been employed by Jose Ibarra was first brought to the Service's attention at the appellate level. The applicant offers no acceptable account as to why this entirely new claim to eligibility was not advanced on the application or at the interview. It is not plausible that the applicant could not initially contact this employer as claimed, but was able to locate him several years later. Moreover, the very purpose of the Form I-700 application is to allow the applicant to claim all the qualifying agricultural employment which entitles him to the benefits of status as a special agricultural worker.

The applicant's advancement of a new employment claim does not overcome the fact that the applicant's initially claimed employment was found to be non-qualifying. It was not until his initial claim was denied that the applicant came forth with a revised claim to eligibility for a different employer, in a different county during roughly the same time period as claimed for the initial employment. For these reasons, the applicant's new claim of employment for Jose Ibarra will not serve to fulfill the qualification requirements necessary for status as a special agricultural worker.

The applicant has, therefore, failed to establish the performance of at least 90 man-days of qualifying agricultural employment during the twelve-month eligibility period ending May 1, 1986.

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