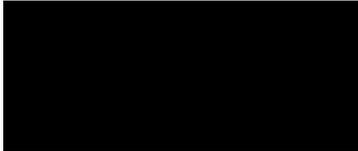




U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



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FILE:  Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Applicant: 

JAN 27 2005

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

PUBLIC COPY

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. 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 on appeal. The appeal will be dismissed.

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

On appeal, the applicant seemingly admits that he worked in landscaping during the period in question.

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 fieldwork in perishable commodities, namely horticultural specialties. Thus, it is possible for an alien who engaged in fieldwork activities as defined above with horticultural specialties in a nursery to qualify for temporary residence, as he was engaged in fieldwork 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 fieldwork. 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 to have harvested for [REDACTED] Illinois for 95 days from May 1, 1985 to May 1, 1986. He did not indicate the crop. The applicant did not provide any evidence from [REDACTED] or anyone else.

The officer of the Immigration and Naturalization Service who interviewed the applicant regarding this application on November 15, 1988 noted that he called [REDACTED]. According to the officer, [REDACTED] indicated that the applicant worked in landscaping and sod. Sod is not included in the list of horticultural specialties in 7 § C.F.R. 1d.6.

On appeal, the applicant states:

I, [REDACTED] has worked pick fruit trees also vegetables sense 1979 up to now. Like now I am picking fruits. Just at that time did that job landscaping which at the time, lady who did the paper said that I qualify for landscaping of the 90 days. Rest of the time its been field work.

It appears the applicant has indicated that he worked in landscaping during the period in question, the twelve-month period ending on May 1, 1986. At any rate, he has not provided any documentary evidence of his employment. Indications are that his claimed employment was in landscaping, which is non-qualifying.

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 notice constitutes a final notice of ineligibility.