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U.S. Citizenship  
and Immigration  
Services

L4

FILE:



Office: CALIFORNIA SERVICE CENTER

Date: **SEP 16 2005**

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 planted and maintained fruit trees. The applicant submitted a employment verification letter.

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 90+ man-days employment thinning, pruning, seeding and weeding shrubs, bulbs, ground cover and trees for Mike Hogan at Ayres and Hogan in Brea, California from April 1985 to the present.

In support of his claim, the applicant submitted a corresponding Form I-705 affidavit signed by Michael Hogan.

The director concluded the applicant had performed only landscaping duties, and denied the application.

On appeal, the applicant submitted an employment verification letter in which the company described its function as Commercial and residential landscaping, planting flowers, trees, ground cover and various types of other plants.

The descriptive letterhead on the employment verification letter submitted in support of the claim describes the firm's operations as "commercial and residential landscaping." 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 Ayres & Hogan Landscape Assoc., Inc. 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."

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.