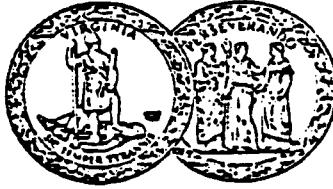


COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION

MISCELLANEOUS: 95.15.
Construction with Reference
to Other Statutes.



DECISION OF COMMISSION

In the Matter of

Mohammad Rokai, Claimant

Lerner's Food, Inc.
Great Falls, Virginia

Date of Appeal

To Commission: September 24, 1984

Date of Hearing: January 23, 1985

Place: RICHMOND, VIRGINIA

Decision No.: 24074-C

Date of Decision: January 23, 1985

Date of Mailing: January 31, 1985

Final Date to File Appeal

with Circuit Court: February 20, 1985

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This is a matter before the Commission on appeal by the claimant from the Decision of Appeals Examiner (No. UI-84-4646), mailed August 15, 1984.

APPEARANCES

None

ISSUE

Is the claimant an alien who has been lawfully admitted for permanent residence or otherwise is permanently residing in the United States under color of law as is provided in Section 60.1-52.5:1 of the Code of Virginia (1950), as amended?

FINDINGS OF FACT

Lerner's Food, Incorporated was the claimant's last employer for whom he worked from July 16, 1983 through October 1, 1983. He was employed as an assistant manager being paid at the rate of \$18,000.00 per year.

The claimant first entered the United States as a student in June of 1977 from Afghanistan. Subsequent to entering this country and studying, the claimant filed a request for political asylum on December 8, 1980. As a result of this request for political asylum, the claimant was granted a work permit by the Immigration and Naturalization Service from December 8, 1980 through July 12, 1984.

The claimant subsequently petitioned the Department of Justice for a permanent residency.

OPINION

Section 60.1-52.5:1 of the Virginia Unemployment Compensation Act provides in pertinent part that benefits shall not be paid on the basis of services performed by an alien unless such alien is an individual who has been lawfully admitted for permanent residence or otherwise is permanently residing in the United States under color of law, including an alien who is lawfully present in the United States as a result of the applications of the provisions of Section 203 (a) (7) or Section 212 (d) (5) of the Immigration and Nationality Act; provided that any modifications to the provisions of Section 3304 (a) (14) of the Federal Unemployment Tax Act as provided by Public Law 94-566 which specified other conditions or other effective date than stated herein for the denial of benefits based on services performed by aliens and which modifications are required to be implemented under state law as a condition for a full tax credit against the tax imposed by the Federal Unemployment Tax Act shall be deemed applicable under the provisions of this section.

Section 3304 (a) (14) of the Federal Unemployment Tax Act was amended by Public Law 95-19 effective January 1, 1978 to read:

"(A) Compensation shall not be payable on the basis of services performed by an alien unless such alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for purposes of performing such services, or was permanently residing in the United States under color of law at the time such services were performed (including an alien who was lawfully present in the United States as a result of the application of the provisions of Section 203 (a) (7) or Section 212 (d) (5) of the Immigration and Nationality Act)."
(Underscoring supplied)

As was noted in Section 60.1-52.5:1 of the Code of Virginia, any modifications to the aforementioned section of the Federal Unemployment Tax Act would apply to the Code of Virginia.

Inasmuch as the claimant was lawfully present for the purposes of performing services in the United States from December 8, 1980 through July 12, 1984, the period in which his wage credits were earned, he may not be denied benefits under this section of the Code. (Underscoring supplied)

It is, therefore, concluded that the claimant has met the eligibility requirements of the aforementioned section of the Code from December 11, 1983 through January 14, 1984, the claim weeks before the Commission.

DECISION

The Decision of Appeals Examiner is hereby reversed. It is held that the claimant was lawfully present for the purpose of performing services in employment during the period December 11, 1983 through January 14, 1984, the claim weeks before the Commission.

The Deputy is directed to determine whether or not the claimant has met the eligibility requirements of the Act during the weeks for which he claimed benefits.


Edwin R. Richards
Special Examiner