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ER

JUN 16 2005

FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

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

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 Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The director denied the application because the applicant failed to establish that he performed at least 90 man-days of qualifying agricultural employment during the eligibility period. This decision was based on adverse information acquired by the Service relating to the applicant's claim of employment for [REDACTED] at Ram/Son Contractors.

On appeal, the applicant reaffirmed his claimed eligibility. The applicant submitted additional evidence of agricultural employment.

In order to be eligible for temporary resident status as a special agricultural worker, an alien must have engaged in qualifying agricultural employment for at least 90 man-days during the twelve-month period ending May 1, 1986, provided he is otherwise admissible under section 210(c) of the Act and is not ineligible under 8 C.F.R. 210.3(d). 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 over 180 man-days of qualifying agricultural employment for [REDACTED] at Ram/Son Contractors from September 1985 to December 1985 and from January 1986 to March 1986.

In support of the claim, the applicant submitted a corresponding Form I-705 affidavit and a notarized letter of employment, both signed by [REDACTED] who identified himself as the applicant's foreman at Ram/Son Contractors. [REDACTED] specified that the applicant worked 112 man-days from September 1985 to December 1985, and 90 man-days from January 1986 to March 1986.

In attempting to verify the applicant's claimed employment, the Immigration and Naturalization Service (INS), now Citizenship and Immigration Services (CIS) acquired information which contradicted the applicant's claim. Specifically, [REDACTED] of Ram/Son Contractors stated to CIS that [REDACTED] only worked as a foreman for a total of twenty-six days during the months of October and November of 1985. Furthermore, [REDACTED] bookkeeper for Ram/Son Contractors, stated that their business ended on December 31, 1985 and that no one but herself actually worked in the month of December.

On June 10, 1991, the applicant was advised in writing of the adverse information obtained by the Service, and of the Service's intent to deny the application. The applicant was granted thirty days to respond. In response to the Service's notice, the applicant submitted a employment affidavit from purported co-worker [REDACTED] who stated that he and the applicant worked for [REDACTED] during the twelve-month period May 1, 1985 to May 1, 1986. The applicant also submitted a letter of more recent non-qualifying employment for the [REDACTED] and Form 1040 U.S. Individual Income Tax Returns for the years 1987 through 1990.

The director concluded that the applicant had failed to overcome the adverse evidence, and denied the application on February 3, 1992. On appeal, the applicant stated that he performed agricultural employment during the qualifying period. The applicant submitted a Form I-705 affidavit, an employment letter and a 1985 Form W-2 Wage and Tax Statement indicating that the applicant worked 19 man-days harvesting grapes for [REDACTED] from May 1, 1985 to May 1, 1986. The applicant also submitted a Form I-705 affidavit signed by [REDACTED] claiming 74 man-days employment "putting paper and General Labor" at [REDACTED] California from June 20, 1985 to September 27, 1985.

Generally, the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility, and amenability to verification. 8 C.F.R. 210.3(b)(1). Evidence submitted by an applicant will have its sufficiency judged according to its probative value and credibility. 8 C.F.R. 210.3(b)(2). Personal testimony by an applicant which is not corroborated, in whole or in part, by other credible evidence (including testimony by persons other than the applicant) will not serve to meet an applicant's burden of proof. 8 C.F.R. 210.3(b)(3).

There is no mandatory type of documentation required with respect to the applicant's burden of proof; however, the documentation must be credible. All documents submitted must have an appearance of reliability, i.e., if the documents appear to have been forged, or otherwise deceitfully created or obtained, the documents are not credible. United Farm Workers (AFL-CIO) v. INS, Civil No. S-87-1064-JFM (E.D. Cal.).

The affidavit from [REDACTED] fails to address the specific number of days that the applicant purportedly worked [REDACTED] nor does it address the adverse evidence acquired by CIS regarding the applicant's purported employment for [REDACTED]. Thus, the affidavit will not serve to establish that the applicant worked a minimum of 90 man-days of agricultural employment during the qualifying period May 1, 1985 to May 1, 1986.

According to officials of Ram/Son Contractors, [REDACTED] worked as a foreman for only 26 days during the qualifying period. The applicant has not addressed nor overcome this derogatory information which directly contradicts the applicant's claim.

Further, an applicant raises questions of credibility when asserting an entirely new claim to eligibility on appeal. In such instances, CIS 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 [REDACTED] was first brought to the Service's attention at the appellate level. The applicant offers no meaningful account as to why this entirely new claim to eligibility was not advanced on the application or at the interview. The very purpose of the Form I-700 application is to allow the applicant to claim the qualifying agricultural employment which entitles him to the benefits of status as a special agricultural worker.

Larger issues of credibility arise when an applicant claims employment which is called into question through CIS investigation, and later attempts to establish eligibility with a different employer, heretofore never mentioned to the Service. The applicant's advancement of a new employment claim does not address, resolve, or diminish the credibility issues raised by the adverse evidence regarding the applicant's initial claim. Therefore, the applicant's overall credibility remains in question. For this reason, the applicant's new claim of employment for [REDACTED] will not serve to fulfill the qualification requirements necessary for status as a special agricultural worker.

The applicant has failed to credibly establish 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.