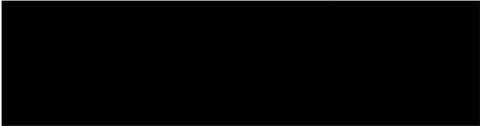


U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3rd Floor
Washington, D.C. 20536

FILE:

OFFICE: California Service Center

DATE: JUN 17 2003

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

IN BEHALF OF APPLICANT: Self-represented

**Identifying data deleted to
prevent identity unwarranted
invasion of personal privacy**

INSTRUCTIONS:

Attached is the decision rendered on your appeal. The file has been returned to the Service Center which processed your case. If your case was sustained, or if your case was remanded for further action, the Service Center will contact you. 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.

for
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application for temporary resident status as a special agricultural worker (SAW) was denied by the District Director, San Francisco. It was reopened by the Director, Western Regional Processing Facility. The application was then denied again, this time by the Director, Western Service Center. It is before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The file contains a G-28, Notice of Entry of Appearance, which indicates that the applicant previously retained counsel. However, the applicant's counsel withdrew from this matter in a letter dated July 10, 1989. All representations shall be considered, but the decision shall be furnished only to the applicant.

In the more recent decision of denial, the director denied the application because the applicant failed to establish the performance of at least 90 man-days of qualifying agricultural employment during the statutory period. This determination was based on evidence adverse to the applicant's claim of employment for [REDACTED] and [REDACTED].

On appeal, the applicant provided no additional evidence in support of her claim of qualifying employment, but stated that she would provide evidence at some unspecified future time. The applicant's employment claims and the evidence are addressed below.

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 the alien is otherwise admissible under section 210(c) of the Act and is not ineligible under 8 C.F.R. 210.3(d). 8 C.F.R. 210.3(a). 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 106 man-days performing unspecified work related to strawberry plants for [REDACTED] at High Low Nursery in Santa Cruz County, California, from October 1985 to January 1986. In support of the claim, the applicant submitted a corresponding Form I-705 employment affidavit and two separate, form employment verification statements. All of those documents were purportedly signed by [REDACTED] and one of the employment verification statements was notarized.

During the applicant's legalization interview the interviewing officer noted that the applicant was unable to recognize a strawberry plant. The interviewing officer also noted that the owner of High Low Nursery had disavowed the applicant's claim of having worked there. On October 20, 1988, the District Director, San Francisco denied the application based on the adverse evidence.

On appeal, the applicant submitted affidavits from two alleged coworkers, from three acquaintances and from her landlord, all attesting that the applicant worked for High Low Nursery. Further,

the applicant submitted her own personal affidavit, in which she reiterated her claim of employment for High Low Nursery. She also stated that her job there was to bundle strawberry plants, and that, in that position, she worked with plants which had immature leaves. The applicant apparently included this assertion to explain her inability to recognize mature strawberry plants.

In that affidavit, the applicant further asserted that she had also worked for Lamanuzzi & Pantaleo during the qualifying period, but had believed that mentioning this additional agricultural employment on her application was unnecessary. In support of her new employment claim, the applicant provided a Form I-705 employment affidavit and a separate, notarized form employment verification letter. Those documents stated that the applicant worked for Lamanuzzi & Pantaleo, of Fresno, California, for 98 man-days, from May 1, 1985 to May 1, 1986, for which she was paid in cash. Those documents were purportedly signed by [REDACTED] a foreman for Lamanuzzi & Pantaleo.

Finally, the applicant submitted a specimen of mature strawberry leaves and petioles, and a specimen of a strawberry plant and roots, perhaps to demonstrate the difference between a mature strawberry plant and an immature plant.

On June 5, 1989, the Director, Western Regional Processing Facility, withdrew the previous decision of denial and reopened the proceedings for review. On that same date, the director issued a Notice of Intent to Deny. In that notice, the director reiterated that [REDACTED] owner of High Low Nursery, disavowed the applicant's claimed employment for that company.

The director also observed that, according to [REDACTED] of Lamanuzzi & Pantaleo, Esteban Rodriguez is not authorized to certify employment verifications on behalf of that company. Further, Lamanuzzi & Pantaleo pays its employees by check, and issues Federal Form W-2 Wage and Tax Statements to each of its employees. The applicant was accorded 30 days to respond to the adverse evidence in that notice.

In response, the applicant's former counsel, in a letter to the Service, requested an extension of time during which to supplement the appeal. Counsel argued that the affidavits provided by the applicant should be accorded more weight than the statements from the applicant's two alleged employers denying that the applicant worked for them. Counsel did not address the information from Lamanuzzi & Pantaleo that all of their workers are always paid by check.

As was stated above, in a letter dated July 10, 1989, counsel withdrew from this case. On February 3, 1992, the Director, Western Service Center, denied the application. Although the

applicant did not respond to that denial, the applicant's appeal, taken from the first denial, remains in effect.

In a letter dated December 30, 1998, the Chief, Legalization Appeals Unit informed the applicant of additional evidence adverse to her employment claims. Specifically, [REDACTED] payroll clerk for Lamanuzzi & Pantaleo, stated that [REDACTED] worked as a foreman only from August 1985 to October 1985, for approximately 54 days. Because he worked so short a time, Mr. [REDACTED] could not have supervised anyone for 90 or more man-days, and is unable to verify that anyone worked for Lamanuzzi & Pantaleo for 90 or more man-days.

That letter also contained evidence adverse to the applicant's claim of employment for High-Low Nurseries. Specifically, the bookkeeper for High-Low stated that [REDACTED] was never permitted to verify employment for High-Low. Further, she indicated that, because payroll records were kept in a location distant from Mr. [REDACTED] he had no access to them and was unable, therefore, to confirm employment for the company.

The applicant was accorded 30 days to respond to that notice, but did not respond. No further information, argument, or documentation has been received from the applicant or from anyone acting on her behalf.

Generally, the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility, and its 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).

According to the district director, the owner of High Low Nursery disavowed the applicant's employment there. The applicant on appeal states the owner would not have remembered her. However, the bookkeeper stated that foreman [REDACTED] did not have access to employment records, implying that he would not be competent to attest to past employment. Given this, if the applicant had truly worked at High Low Nursery, it is not clear why she would not have gone to the nursery in an attempt to have the bookkeeper check the employment records. In view of all factors, it is concluded the applicant has not demonstrated that she worked at High Low Nursery.

Regarding the Lamanuzzi & Pantaleo claim, an applicant raises additional questions of credibility when asserting a new claim to eligibility in response to a Notice Of Intent to Deny. The instructions to the application do not encourage applicants to limit their claims; rather, applicants are encouraged to list multiple claims, as they are instructed to show the most recent employment first.

Further, the applicant's additional claim of employment for Lamanuzzi & Pantaleo in Fresno, California from May 1, 1985 to May 1, 1986 appears to conflict with her statement, made on her application, that she was living in Salinas, approximately 150 miles distant, during that entire time.

Further still, the applicant claims to have been paid in cash for her work at Lamanuzzi & Pantaleo, although, in fact, Lamanuzzi & Pantaleo always paid all of their workers by check. In addition, [REDACTED] was employed there for only about 54 days during the qualifying period, and therefore could not have verified employment of 90 days. It is therefore concluded the applicant was not employed at Lamanuzzi and Pantaleo for at least 90 days during the qualifying period.

The applicant has failed to credibly establish that she performed at least 90 man-days of qualifying agricultural employment during the statutory period ending May 1, 1986, and is ineligible for temporary resident status as a special agricultural worker.

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