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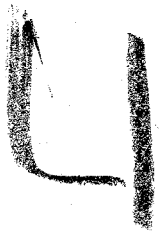
U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

U.S. Citizenship and Immigration Services



[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: JUL 20 2004

IN RE: Applicant: [redacted]

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:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has 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 subsequently came before the Administrative Appeals Office (AAO) on appeal. The appeal was dismissed by the AAO. The matter was reopened and remanded to the AAO by the United States District Court, Southern District of California, for further consideration and action. The appeal will be sustained.

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 decision was based on adverse information acquired by the Immigration and Naturalization Service, or the Service (now Citizenship and Immigration Services, or CIS) relating to the applicant's claim of employment for at

On appeal, the applicant reaffirmed his original claim of employment for The applicant also put forth a new claim of employment for at his farm in The applicant submitted documentation in support of his appeal.

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, and must be otherwise admissible under section 210(c) of the Immigration and Nationality Act (INA) and 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 100 man-days cultivating strawberries for at in Santa Barbara County, California from May 1, 1985 to May 1, 1986.

In support of the claim, the applicant submitted a corresponding Form I-705 affidavit signed by The applicant also submitted a separate "Affidavit of Verification of Past Employment," signed by Ms. which indicates that the applicant was employed from February 8, 1985 to August 30, 1985, but that only those days worked after May 1, 1985 were included in the total number of man-days worked.

In attempting to verify the applicant's claimed employment, the Service acquired information that tended to contradict the applicant's claim. Officials of indicated that farmed only two acres of strawberries during the qualifying period. They further stated that only two workers are needed per acre of strawberries. Moreover, in a letter dated January 23, 1989, Secretary at Furukawa Farms, indicated that contract with the farm was in effect from October 1, 1985 to approximately August 2, 1986.

However, a review of the adverse information relied upon by the director in his decision reveals no direct evidence that would specifically disprove that the applicant did not work for as originally claimed. The information utilized by the director to deny the application is based on supposition and speculation derived only from circumstantial evidence.

In addition, the applicant subsequently put forth a new claim of employment for , at his farm in Stockton, California. In support of this new claim, the applicant submitted a copy of a man-days summary signed by , as well as a copy of "Notice of Employer Contribution Rates and Statement of Reserve Account for 1987" from the Economic Development Department of the State of California indicated that he employed the applicant for more than 90 man-days cultivating asparagus, onions, beets, and pears at his farm in Stockton, California from May 1, 1985 to August 5, 1985.

The inference to be drawn from the documentation shall depend on the extent of the documentation, its credibility and amenability to verification. If an applicant establishes that he has in fact performed the requisite qualifying agricultural employment by producing sufficient evidence to show the extent of that employment as a matter of

just and reasonable inference, the burden then shifts to the Service to disprove the applicant's evidence by showing that the inference drawn from the evidence is not reasonable. 8 C.F.R. § 210.3(b)(1).

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... if the Service has not obtained information which would refute the applicant's evidence, the applicant satisfies the requirements for the SAW program with respect to the work eligibility criteria. *United Farm Workers (AFL-CIO) v. INS*, Civil No. S-87-1064-JFM (E.D. Cal.).

Unlike many other cases that were denied, this record contains no sworn statement, admission, record of conviction or other indication which would lead to a conclusion that the applicant did not work as claimed. The applicant has submitted sufficient evidence to establish as a matter of just and reasonable inference 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 eligible for adjustment to temporary resident status as a special agricultural worker.

ORDER: The appeal is sustained. The application for temporary residence as a special agricultural worker is approved.