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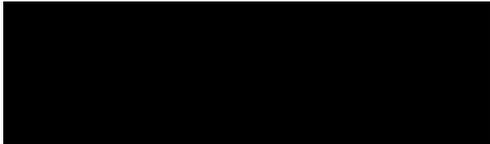
U.S. Department of Homeland Security
20 Massachusetts Ave. NW, Rm. A3042
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U.S. Citizenship
and Immigration
Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

IN RE:

Applicant:



PETITION: 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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter 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 (SAW) was denied by the District Director, San Jose, California, reopened and denied again by the Director, Western Service Center. The matter is before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

In both decisions 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 eligibility period. The decisions were based on evidence adverse to the applicant's claim of employment for Viewmont Orchards.

Although the applicant did not respond to the more recent decision of denial, his appeal taken from the previous decision of denial is still in effect. In that appeal the applicant reaffirmed his claimed employment in agriculture. The applicant's employment claim and the evidence are addressed below.

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 Act 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 95 man-days employment picking apples and pears for [REDACTED] from May 1, 1985 to April 30, 1986.

In support of the claim, the applicant submitted a corresponding Form I-705 affidavit and a separate employment verification letter, which were signed by [REDACTED]. The applicant also submitted a 1985 Form W-2 Wage and Tax Statement indicating that the applicant earned \$660.00 at Viewmont Orchards.

On June 17, 1988, the District Director, [REDACTED] determined that the applicant had not credibly established his claim to eligibility and denied the application. On appeal, the applicant reaffirmed his claimed agricultural employment. The applicant did not submit any additional evidence in support of his claimed employment.

Subsequently, the application was reopened and on February 13, 1990, in a Notice of Intent to Deny, the Director, Western Regional Processing Facility, noted that the Service possessed evidence adverse to the applicant's employment claim. Specifically, according to [REDACTED] payroll department employee of Viewmont Orchards, the applicant worked eight days in September 1985 and eleven days in October 1985 and was provided with a Form I-705 affidavit indicating that the applicant worked a total of 19 days for Viewmont Orchards during the qualifying period. The applicant was informed that, based on the aforementioned information, his claimed 95 man-days employment could not be deemed credible. The applicant was granted 30 days to respond. The record does not contain a response from the applicant.

The Director, Western Service Center, found that the applicant had not overcome the adverse evidence and denied the application on February 14, 1992. Subsequent to that denial, the applicant has made no statements, nor has he submitted any additional documentary evidence in support of his claim to eligibility.

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.).

Carolyn S. Wells informed the Service that the applicant only worked for Viewmont Orchards for 19 days during the qualifying period and provided the Service with payroll records to confirm this fact. This derogatory information obtained by the Service directly contradicts the applicant's claim. The applicant has not addressed nor overcome such derogatory evidence.

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.