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**U.S. Citizenship
and Immigration
Services**

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: JUN 21 2005

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. Wismann, Director
Administrative Appeals Office

DISCUSSION: The application for temporary resident status as a special agricultural worker (SAW) was denied by the Director, Western Service Center. A subsequent appeal was remanded by the Legalization Appeals Unit (LAU), now the Administrative Appeals Office (AAO). The application was denied again by the Director, California Service Center. The matter is before the 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 [REDACTED]

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 reiterated his claim of employment for [REDACTED]. The applicant submitted additional employment documentation.

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 to have harvested chili peppers for 103 man-days, from May 6, 1985 to December 17, 1985 in Santa Maria, California.

In support of the claim, the applicant submitted a corresponding Form I-705 affidavit and a separate form employment verification letter, both of which were purportedly signed by farm labor contractor [REDACTED]

On April 20, 1992, the director denied the application. On appeal, the applicant stated that he had tried to locate [REDACTED] but was unable to find him stating that he was submitting other evidence. The applicant submitted a form affidavit from [REDACTED] who merely stated that he met the applicant during their employment for [REDACTED]. The affiant provided no particulars as to when or where this meeting purportedly took place.

On September 20, 2001, the LAU remanded the case for the inclusion of a copy of the notice of intent to deny into the record of proceedings.

On March 8, 2004, the director reopened the application and reissued the notice of intent to deny informing the applicant of the adverse evidence in the possession of the Service. Specifically, the applicant was informed that on July 30, 1989 [REDACTED] stated in a letter to the Service that his signature had been falsified on employment documents, and that he had submitted to the Service a list of 267 names belonging to the individuals who had actually worked for him or with him. The applicant was not named on this list. The applicant did not respond to the notice.

The director concluded the applicant had not overcome the derogatory evidence, and again denied the application on June 9, 2004. The record does not contain a response to the director's final decision.

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 a purported co-worker submitted on appeal is not sufficient to overcome the adverse evidence in this case. The applicant is not named on the list of employees provided by [REDACTED]. The applicant has not overcome this adverse evidence which directly contradicts the applicant's claim. Therefore, the documentary evidence submitted by the applicant cannot be considered as having any probative value or evidentiary weight.

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.