

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Massachusetts Ave. NW, Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

41

MAR 30 2005

FILE:

[REDACTED]

Office: NEBRASKA SERVICE CENTER

Date:

IN RE:

Applicant:

[REDACTED]

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:

[REDACTED]

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 Offi

DISCUSSION: The application for temporary resident status as a special agricultural worker was denied by the Director, Northern Regional Processing Facility, Lincoln, Nebraska and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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. This determination was based on information provided by [REDACTED] for whom the applicant claimed to have been employed.

On appeal, the applicant requested a copy of his file through the Freedom of Information Act (FOIA). The Immigration and Naturalization Service (INS), now Citizenship and Immigration Services (CIS), complied with the request on March 15, 1993. The applicant stated that, upon receipt of a copy of his file, he would submit a brief. To date, no brief or additional evidence has been submitted.

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). 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 application, Form I-700, the applicant claimed to have performed 112 man-days of qualifying agricultural work for [REDACTED] Toney's Berry Farm in Clackamas County, Oregon, from May 15, 1985 to November 20, 1985. He claimed no other employment.

In support of the claim, the applicant submitted a corresponding Form I-705 affidavit and an employment letter, both purportedly signed by Fred Wickersham.

In attempting to verify the applicant's claimed employment, the Service acquired information which contradicted the applicant's claim. In the United States District Court for the District of Oregon [REDACTED] pled guilty to conspiracy to falsify and sell thousands of affidavits attesting to employment on his farm. As part of his plea agreement, [REDACTED] gave sworn statements in which they provided, based on their records and memory, a list of 31 names of individuals who did in fact actually perform at least 90 man-days of qualifying agricultural employment for them. They also provided another list of 101 names of individuals (again based on their memory and records) they believed worked for them, but for less than 90 days. The applicant's name does not appear on either list. Both Wickershams also stated that they have no other records, documentation or personal recollection which would support any other Form I-705 affidavit. Several thousand aliens are known to have filed applications claiming to have performed 90 or more man-days of employment for the Wickershams.

The director denied the application on July 16, 1991. The record reflects that the applicant has been provided with two opportunities to respond to the adverse evidence acquired by CIS, on appeal in response to the Notice of Denial, and subsequent to the receipt of a copy of his legalization file. To date, the applicant has not made any additional statements, nor has he provided a brief or other additional evidence in support of his claimed employment.

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 applicant has not reiterated his employment claim for the Wickershams on appeal. Nor has he provided any documentation whatsoever to rebut the adverse evidence. In light of that, the guilty plea of [REDACTED], the absence of the applicant's name on the lists provided by the Wickershams, and the massive number of applicants who all claimed to have worked for the Wickershams at the same time, we find the applicant has failed to establish the performance of at least 90 days of employment for the Wickershams.

The applicant has failed to 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.