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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:



MAR 30 2005

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:

SELF-REPRESENTED

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 was denied by the Director, Western Service Center, 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 decision was based on adverse information acquired by the Service relating to the applicant's claim of employment for [REDACTED] at Lov-Cot Labor.

On appeal, the applicant submitted a copy of evidence, previously 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, 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 worked 126 man-days for [REDACTED] Jr., at Lov-Cot Labor in Lovington, New Mexico from June 1985 to October 1985.

In support of her claim, the applicant submitted a corresponding Form I-705 affidavit signed by [REDACTED] Jr.

In the course of attempting to verify the applicant's claimed employment, the Service acquired information which contradicted the applicant's claim. Attempts to verify the applicant's employment through the telephone number and address provided by [REDACTED] were unsuccessful. A Service officer visited Lovington, New Mexico, and discovered only one operation with the name "Lov-Cot." In a letter to the Service dated January 12, 1989, the manager for computer data processing of Lov-Cot Industries informed the Service that Lov-Cot "is not currently (and) never has been . . . engaged in the cultivation, production, or harvesting of perishable commodities. . . . We receive, store and ship baled cotton. This is the only commodity that we handle and we do not produce or harvest it." The official added that Lov-Cot Industries has never hired any farm labor contractors. On February 6, 1990, a Service officer telephoned the comptroller for Lov-Cot Industries, who stated that the company had no record of ever employing [REDACTED].

On April 11, 1991, the applicant was advised in writing of the adverse information obtained by the Service, and of the Service's intent to deny the application. The applicant was granted thirty days to respond.

In response to the Service's notice, the applicant submitted a letter signed by [REDACTED] who stated that he had been contacted by the applicant for employment verification [REDACTED] stated that all employees were paid in cash and that therefore, no checks stubs or other proof was available other than the employment letter already given the applicant. The affiant indicated that the employer name was "R.A. Moreno Enterprises."

The director determined that the applicant had failed to overcome the adverse evidence, and denied the application on August 16, 1991. On appeal, the applicant submitted a copy of the letter signed by [REDACTED].

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.).

Service investigation failed to confirm the existence of Lov-Cot Labor. Officials of Lov-Cot Industries have stated that that company is not involved with the production of perishable agricultural commodities, and that the applicant's purported employer, [REDACTED] has never been employed there. The applicant has not overcome this derogatory evidence which directly contradicts his/her 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.