

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

U.S. Department of Homeland Security
20 Mass. Avenue, N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

41

PUBLIC COPY



FILE:

XYU 88 089 1068

Office: CALIFORNIA SERVICE CENTER

Date: AUG 01 2006

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. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for temporary resident status as a special agricultural worker was denied by the Director, Western Service Center, and then reopened and denied again by the Director, California Service Center. The matter 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 that he performed at least 90 man-days of qualifying agricultural employment during the eligibility period. This decision was based on adverse information acquired by the Immigration and Naturalization Service (Service), now Citizenship and Immigration Services (CIS), regarding the applicant's claim of employment for [REDACTED]

On appeal from the initial denial, the applicant asserted that he had submitted sufficient documentation to establish his eligibility. The applicant stated that he moved and did not receive any letters from the Service and requested a copy of the Notice of Intent to Deny. The applicant was mailed a copy of the notice on June 30, 1993. Subsequently, the applicant submitted additional evidence claiming employment for [REDACTED]. The record does not contain any response to the final denial.

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 Form I-700 application, the applicant claimed 116 man-days thinning and weeding onions, watermelons and cantaloupe for [REDACTED] from May 1, 1985 to May 1, 1986. In support of the claim, the applicant submitted a Form I-705 affidavit and separate employment statement, both purportedly signed by Mr. [REDACTED]. The Form I-705 indicated that the applicant worked in Yuma County, Arizona.

In attempting to verify the applicant's claimed employment, the Service acquired information which contradicted the applicant's claim. [REDACTED] and four co-defendants were convicted by jury trial of seventeen felony counts of Conspiracy, Aiding and Abetting, and the Creation and Supplying of False Application Documents for Adjustment of Status, in U.S. District Court, Phoenix, Arizona, CR [REDACTED]. In addition, a Service investigation revealed that [REDACTED] the applicant's purported employer, did not employ or supervise agricultural employees in any capacity during the qualifying period. Furthermore, Yuma County tax and real estate records indicate that there was no agricultural land in Yuma County that was owned or operated by [REDACTED].

The record of proceedings does not contain an initial Notice of Decision. On an appeal received August 2, 1993, the applicant submitted a revised claim of employment for [REDACTED] claiming 105 man-days of employment picking, pruning and watering grapes at Brookside Farm in San Bernardino, California from May 1985 to May 1986. As evidence, the applicant submitted a Form I-705 affidavit and a separate employment letter, both signed by [REDACTED].

On April 12, 2000, the AAO determined that the applicant had not been apprised of any adverse evidence pertaining to his claimed employment and withdrew the decision, remanding the case for a new decision.

On, April 14, 2005, the applicant was advised in writing of the adverse information pertaining to the applicant's initial claim of employment for [REDACTED] that was obtained by the Service, and of the Service's intent to deny the application. The applicant was granted thirty days to respond. The applicant submitted a letter in which he stated that he worked for both [REDACTED] and [REDACTED] in the same year. He stated that he realized he should have claimed all of his employment when he first applied. The applicant stated that he had been working in the United States since 1985 and was submitting some additional evidence of his employment.

The applicant submitted a copy of an Employment Eligibility Verification and seven different copies of pay vouchers. All of the documents reflect employment and eligibility in 1987, which is of no probative value to the applicant's claimed May 1985 to May 1986 employment.

The Director, California Service Center determined that the applicant had failed to overcome the adverse evidence, and denied the application on May 26, 2005. The record does not contain a response from the applicant.

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.). June 15, 1989.

A Service investigation revealed that [REDACTED] the applicant's purported employer, did not employ or supervise agricultural employees in any capacity during the qualifying period. Furthermore, there was no agricultural land in Yuma County that was owned or operated by [REDACTED]. The applicant claimed he worked for [REDACTED] in Yuma County.

The adverse information acquired by the Service regarding the applicant's alleged employment for [REDACTED] directly contradicts the applicant's claim. The applicant has not overcome such derogatory evidence. Thus, the documentary evidence submitted by the applicant cannot be considered as having any probative value or evidentiary weight.

An applicant raises serious questions of credibility when asserting an entirely new claim to eligibility on appeal. In such instances, the Service may require credible evidence to support the new claim as well as a complete plausible explanation concerning the applicant's failure to advance this claim initially. The instructions to the application do not encourage an applicant to limit his claim; rather they encourage the applicant to list multiple claims as they instruct him to show the most recent employment first.

The applicant's claim to have been employed by [REDACTED] was first brought to the Service's attention at the time the applicant appealed the initial denial. The applicant offers no credible account as to why this entirely new claim to eligibility was not advanced on the application or at the interview. The very purpose of the Form I-700 application is to allow the applicant to claim the qualifying agricultural employment which entitles him to the benefits of status as a special agricultural worker.

Larger issues of credibility arise when an applicant claims employment which is called into question through Service investigation, and later attempts to establish eligibility with a different employer, heretofore never mentioned to the Service. The applicant's advancement of a new employment claim does not address, resolve, or diminish the credibility issues raised by the adverse evidence regarding the applicant's initial claim. Furthermore, the applicant's additional claim of employment places the applicant in California at the same time he originally claimed he was working in Arizona. Furthermore, the notes of the officer who interviewed the applicant do not indicate the applicant claimed employment for anyone other than the [REDACTED] during the qualifying period. Therefore, the applicant's overall credibility remains in question. For this reason, the applicant's new claim of employment for [REDACTED] will not serve to fulfill the qualification requirements necessary for status as a special agricultural worker.

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.