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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
XMA 89 510 4005

Office: VERMONT SERVICE CENTER

Date: NOV 09 2006

IN RE: Applicant: [REDACTED]

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:



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, Eastern Regional Processing Facility and then reopened and denied by the Director, Vermont Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The facility director denied the application because the applicant failed to appear for his scheduled legalization interview. On appeal, counsel stated that the applicant never received the Service's notices to appear for an interview, and requested that the application be reopened and the applicant scheduled for another interview. The center director then 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 regarding the applicant's claim of employment for [REDACTED] and [REDACTED]. On appeal from the center director's decision, the applicant submits a statement from counsel and additional evidence.

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 performed 115 man-days of qualifying agricultural employment for [REDACTED] in [REDACTED] Florida from November 1985 to April 1986. In support of this claim the applicant submitted two separate photocopied employment affidavits, a photocopied man-days breakdown, a photocopied payroll sheet, and several photocopied identity documents. Each document was signed by [REDACTED]. The applicant also submitted a photocopied lease agreement. It is noted that the applicant did not claim to have ever engaged in agricultural employment for any period other than the twelve-month period relevant to qualifying for temporary resident status.

On June 13, 1990, the facility director denied the application because the applicant had not responded to Service notices sent to the applicant requesting that he appear for an interview. On appeal, counsel presented a compelling argument as to why the applicant had not responded to the notices. The director treated the appeal as a Motion to Reopen and reopened the application.

On January 15, 1993, the applicant was interviewed, and interviewer's notes taken during the interview indicate that the applicant stated that he worked on Long Island, New York with potatoes from June 1985 to May 1986. The applicant stated that he received a Form I-705 affidavit in the mail from the farm boss, but that he could not remember his name. Counsel stated that the applicant left the Form I-705 at home. The applicant submitted a photocopied employment verification letter signed by [REDACTED] who stated that the applicant worked for him from June 1, 1985 to May 31, 1986, planting and harvesting vegetables, and that the applicant also packed potatoes. [REDACTED] stated that he paid the applicant \$100 per month in addition to room and board. The applicant also submitted a photocopied work schedule. The schedule indicated that the applicant worked a total of 297 man-days from June 1, 1985 to May 31, 1986. The schedule reflected that the applicant worked 30 days in November 1985, 24 days in December 1985, 16 days in January 1986, 28 days in February 1986, and 28 days in March 1986.

On May 19, 1998, the applicant was advised in writing of adverse information obtained by the Service, and of the Service's intent to deny the application. Specifically, the applicant was advised that the Service had learned that [REDACTED] was not in operation during the qualifying period. He was also advised that the fact that he had claimed employment at the same time on Long Island, New York,

raised questions regarding the credibility of the applicant's documentation. The applicant was granted thirty days to respond.

In response, the applicant submitted a statement in which he asserted that a friend was filling out forms for some other people and mistakenly wrote the wrong farm name and address on his application. The applicant stated that he pointed this out during the interview and submitted all of his supporting documentation for his employment with [REDACTED] at the interview. The applicant stated that he was submitting additional evidence of his employment with [REDACTED]

The applicant submitted a letter from [REDACTED] who stated that he had previously submitted documentation on behalf of the applicant and reiterated that the applicant worked for him. The applicant also submitted photocopied employment documentation, previously submitted.

The applicant submitted an employment and residence affidavit from [REDACTED] who stated that the applicant lived with him from June 1, 1985 to May 31, 1986 at [REDACTED]. The affiant stated that the applicant shared the rent and all other expenses during the period. The affiant further stated that he had personal knowledge that the applicant worked for [REDACTED] from June 1, 1985 to May 31, 1986.

The applicant submitted an employment and residence affidavit from [REDACTED] who stated that he was the applicant's friend and that the applicant had lived at the [REDACTED] from June 1985 to May 1986 and that the applicant worked at [REDACTED] during that time. He indicated that he knew this because he and the applicant frequently talked on the telephone.

The applicant also submitted an employment and residence affidavit from [REDACTED] who stated that the applicant lived on Long Island and worked at [REDACTED] during the period June 1, 1985 to May 31, 1986. He stated that he went to visit the applicant occasionally.

The center director concluded the applicant had not overcome the derogatory evidence, and denied the application on June 15, 1998.

On appeal, counsel asserts that a friend of the applicant's mixed up information on the applicant's application and that the applicant has maintained the employment claim for [REDACTED] since being interviewed. To explain why the applicant was said to have received room and board at the farm and yet to have resided elsewhere with [REDACTED], counsel asserts the applicant would stay at the farm when it was late and with his friend when he was off or not so late getting off.

The applicant submits two separate hand-written documents signed by [REDACTED]. One document is a letter in which he states that, in January, February, and March the applicant packed potatoes in 5-10-50 lb. bags. This is meant to explain what duties the applicant could have performed in the winter. The second document is another version of the work schedule. This one claims that the applicant worked 397 days.

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.

The applicant initially claimed employment for [REDACTED]. The applicant says this was a mistake and explains it away by stating that a friend filled out his application and put down the name and address of the wrong farm. However, the applicant has not addressed the fact that the record contains two separate photocopied employment affidavits, a photocopied man-days breakdown, and photocopied payroll sheet, all claiming that the applicant worked for [REDACTED]. These documents were purportedly signed by [REDACTED]. The record also contains documents identifying [REDACTED]. It is concluded that the applicant provided these documents. Furthermore, the applicant signed his name in Section 32 of the Form I-700 application declaring that everything on that application was true. Therefore, it cannot be concluded that the filing of this application was a mistake as the applicant has claimed.

According to the record, the applicant purportedly worked 261 days during the period June 1, 1985 to May 31, 1986 for [REDACTED]. For this labor the applicant was purportedly paid \$100 per month plus free room and board. If this were the case, it does not seem credible that the applicant would pay rent and other expenses such as food to a friend while earning approximately \$25 per week. Furthermore, the record contains no original documentation from which [REDACTED] extracted the employment dates of the applicant.

An applicant raises questions of credibility when asserting an entirely new claim to eligibility after submitting a fraudulent claim initially. 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. 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 record reflects that the first documentation the applicant appeared to have relating to his purported employment for [REDACTED] is dated 1991. Therefore, it is concluded that the applicant was not prepared to submit this documentation at the time he filed his application. It is significant that the applicant has offered no account as to why this entirely new claim to eligibility was not advanced on the application.

The applicant has, therefore, 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.