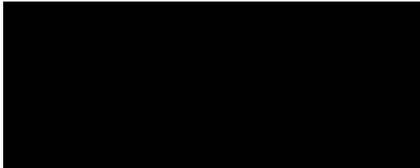


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U.S. Citizenship
and Immigration
Services



FILE: [REDACTED]
XSK-88-218-1002

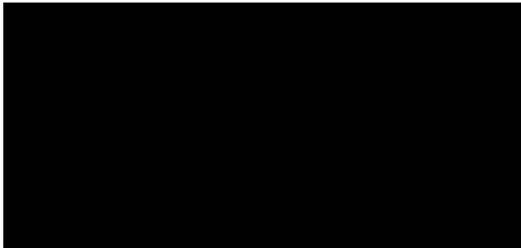
Office: NEBRASKA SERVICE CENTER

Date: NOV 29 2006

INRE: Applicant: [REDACTED]

APPLICATION: Application for Status as a Temporary Resident pursuant to Section 210 of the
Immigration and Nationality Act, as amended, 8U.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 Chief
Administrative Appeals Office

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

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 director based on information acquired by the Service relating to the applicant's claim of employment for [REDACTED]

On appeal the applicant stated that, upon being requested to do so, he submitted additional evidence in support of his claimed eligibility.

An applicant must have engaged in qualifying agricultural employment, which has been defined as "seasonal agricultural services," for at least 90 man-days during the twelve-month period ending May 1, 1986, pursuant to 8 C.F.R. § 210.1 (h).

Section 210(h) of the Act, 8 U.S.C. § 1160, defines "seasonal agricultural services" as the performance of field work related to the planting, cultural practices, cultivating, growing, and harvesting of fruits and vegetables of every kind and other perishable commodities, as defined in regulations by the Secretary of Agriculture.

An applicant for temporary resident status under section 210(a) of the Act "has the burden of proving by a preponderance of the evidence that he or she has worked the requisite number of man-days, is admissible to the United States... and is otherwise eligible for adjustment of status under this section." 8 C.F.R. § 210.3(b). The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also states that "[t]ruth is to be determined not by the quantity of the evidence alone but by its quality." Id.

On Form I-700, the applicant claimed that he planted, irrigated and harvested wheat for 95 days from Phillips Farm from May 1985 to March 1986. In support of this claim, the applicant submitted a corresponding Form I-705 affidavit signed by [REDACTED]

The applicant also claimed 112 man-days of employment preparing and irrigating a wheat field for [REDACTED] from November 1985 to March 1986. He submitted a corresponding Form I-705 from [REDACTED] however, it showed the employment from May 1985 to March 1986 rather than from November 1985 to March 1986.

The director denied the application because the applicant's documentation concerning his work for [REDACTED] differed from that provided in an earlier Special Agricultural Worker application filed by the applicant. Prior to the May 14, 1990 denial in this current case, the applicant submitted a letter from [REDACTED] indicating that the applicant cultivated wheat for April 1, 1985 to November 1, 1985; a copy of a letter from [REDACTED] indicating that the applicant worked 112 man-days from November 3, 1985 to March 10, 1986 doing ranch work and preparing the land for planting grain; and, a letter from [REDACTED] who stated that he was not familiar with preparing the employment forms when the applicant first applied and that he had now prepared another form showing all of the applicant's employment by him.

The record contains a copy of the earlier Form 1-700 application claiming a total of 292 man-days employment for harvesting and irrigating wheat and alfalfa from April 1984 to November 1986, as well as a Form 1-705 affidavit signed by . That application was denied because, according to the affidavit, the applicant did not work, in the 12-month period ending on May 1, 1986 with wheat, a qualifying crop, although he did work with the non-qualifying crops of alfalfa and turf. While the evidence submitted with the first application indicates the applicant worked with turf and alfalfa, non-qualifying crops, in that 12-month period, the record further demonstrates from the documentation now submitted that the applicant worked at least 90 man-days during the qualifying period with wheat, a qualifying crop.

The inference to be drawn from the documentation shall depend on the extent of the documentation, its credibility and amenability to verification. If an applicant establishes that he has in fact performed the requisite qualifying agricultural employment by producing sufficient evidence to show the extent of that employment as a matter of just and reasonable inference, the burden then shifts to the Service to disprove the applicant's evidence by showing that the inference drawn from the evidence is not reasonable. 8 C.F.R. § 210.3(b)(1).

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... if the Service has not obtained information which would refute the applicant's evidence, the applicant satisfies the requirements for the SAW program with respect to the work eligibility criteria. *United Farm Workers (AFL-CIO) v. INS*, Civil No. S-87-1064-JFM (E.D. Cal.), June 15, 1989.

This record contains no sworn statement, admission, record of conviction or other indication which would lead to a conclusion that the applicant did not work as claimed. While a document submitted with the second application differs from one submitted with the first application, the employer has provided an explanation. Furthermore, as the applicant readily revealed on his second application that he had applied once before, it cannot be concluded that he attempted to hide anything. The applicant has submitted sufficient evidence to establish as a matter of just and reasonable inference the performance of at least 90 man-days of qualifying agricultural employment during the twelve-month statutory period ending May 1, 1986.

ORDER: The appeal is sustained. The director shall complete the adjudication of the application.