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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



FILE:

XMA-88-083-8025

Office: VERMONT SERVICE CENTER

Date: **OCT 31 2006**

INRE:

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

INSTRUCTION'S:

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.

A handwritten signature in black ink, appearing to read "R. P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: This matter is an application for temporary resident status as a special agricultural worker denied by the Director, Eastern Regional Processing Center, which is 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 she performed 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]

On appeal, the applicant states that she has been denied due process and the decision to deny her application is contrary to the evidence 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 1-700, the applicant claimed 102 man-days of qualifying agricultural employment for [REDACTED] from May 20, 1985 to October 4, 1985.

In support of the application, the applicant submitted a corresponding Form 1-705 affidavit, a photocopied earnings statement, and additional employment statements purportedly attested to by [REDACTED], who indicates he is a grower and employer at the farm division of Royal Crest Meats, Inc., located at [REDACTED]. The applicant also submitted a letter of more recent non-qualifying employment for Pace Construction Company.

In the course of attempting to verify the applicant's claimed employment, the Service acquired information which contradicted the applicant's claim. The owners of the property located at [REDACTED] **stated** in sworn affidavits that they never leased any farmland to Royal Crest, Inc. or [REDACTED] for an [REDACTED] purpose. In addition, the caretakers of the property at [REDACTED] stated in a sworn affidavit that [REDACTED] **did** not have permission to, nor did he in fact, perform any fanning activity at [REDACTED]. They stated he **did** have permission to keep some livestock and vehicles at that property.

On December 20, 1988, [REDACTED] pled guilty in U.S. District Court in Trenton, New Jersey to violating 18 V.S.C. § 371 re: 18 U.S.C. § 1001, conspiracy and **making** false statements, in relation to supplying aliens with fraudulent SAW documentation.

[REDACTED] **was** granted a Motion to Vacate his Guilty Plea on May 8, 1989, and a date was set for a new trial.

On November 14, **1989**, [REDACTED] was again convicted of conspiracy to create and supply false documents to be submitted to the Immigration and Naturalization Service, in violation of Title 18, U.S.C. Section 1001. Mr. [REDACTED] **was** sentenced to 30 months in federal prison and fined \$90,050.00.

On March 23, 1989, the applicant was advised in writing of the adverse information which had been obtained by the Service as of that date, 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 of acquaintance from Wilfred Graeme and an envelope addressed to the applicant at Royal Crest Meats, Inc. in Trenton New Jersey, postmarked June 12, 1981.

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.

The record reveals that the applicant was sent the Notice of Intent to Deny containing the adverse evidence on March 23, 1989 and that she responded to the notice with additional evidence. The Notice of Decision was sent to the applicant on December 14, 1989. On August 17, 1990, the applicant sent a letter to the Service indicating that she not received the Notice of Decision. On September 6, 1990, the applicant was re-mailed a copy of the decision. After that, the applicant filed a Notice of Appeal of Decision, on October 4, 1990. The applicant has been advised as to the reason(s) for the denial of her application and afforded the opportunity to rebut the adverse evidence. Due process has been served.

The applicant's claim that the evidence she submitted supports the approval of her application is not supported by the record. It is evident **pled** guilty to a count of conspiracy to make and use false documents to be submitted to the Immigration and Naturalization Service. As a result of the conspiracy orchestrated by Mr. **and** others, over one thousand sets of fraudulent documents on behalf of alien SAW applicants were produced, and various fees were collected from these alien SAW applicants in return for performing various functions in connection with producing fraudulent SAW documents. *United States v. Larry Marval*, No. CR 88-245-01 (D.C. N.J. 1989).

According to 8 C.F.R. § 210.3(b), the burden of proof is on the applicant until she has presented sufficient credible evidence which is amenable to verification and shows the extent of the claimed employment as a matter of just and reasonable inference. This applicant's claim relies on documentation signed by [REDACTED] who has pled guilty to, and been convicted of, conspiracy and fraud in connection with special agricultural worker applications. This conviction of admitted fraud, when examined along with the applicant's failure to address the original statement from the caretakers that [REDACTED] did not perform any qualifying farming activity at 318 Ward Avenue, indicates that the application is of severely dubious credibility, is not amenable to verification and, therefore, fails to meet the evidentiary requirements set forth in 8 C.F.R. 210.3(b) and (c).

The applicant has failed to establish the performance of at least 90 man-days of qualifying agricultural employment during the twelve-month 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.