



U.S. Citizenship
and Immigration
Services

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APR 16 2007

FILE:

XKA 88 226 2003

Office: NEBRASKA SERVICE CENTER

Date:

IN RE:

Applicant:

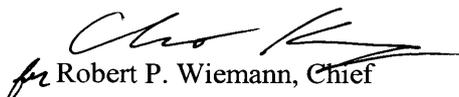
APPLICATION:

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:

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 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.


for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Service Center, denied the application for temporary resident status as a special agricultural worker. The applicant filed an appeal of the decision. The Legalization Appeals Unit (LAU) remanded the matter to the director for the purpose of entering all derogatory evidence into the record. The director provided a copy of the derogatory evidence to the applicant through counsel. The appeal will be dismissed.

The director initially 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 farm labor contractor Paul Ramirez.

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 the provisions of 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 picked citrus fruit for 155 days for [REDACTED] at Kansas City Produce from August 1985 to April 1986. In support of the claim, the applicant submitted two Form I-705 affidavits from [REDACTED] who claimed to be a foreman at Kansas City Produce.

In attempting to verify the applicant's claimed employment, the Immigration and Naturalization Service, or the Service (now, Citizenship and Immigration Services, or CIS) acquired information that contradicted the applicant's claim. In the course of an investigation, the Service contacted [REDACTED], the owner of Kansas City Produce who provided the Service with [REDACTED] employment history. [REDACTED] informed the Service that [REDACTED] was employed at Kansas City Produce from about April 23, 1986 to July 23, 1986. Given these employment dates, [REDACTED] could only attest to eight days of work during the qualifying period.

The director initially denied the Form I-700 application on March 6, 1991. LAU remanded the case for the inclusion of all derogatory information into the record of proceeding. On February 2, 1998, the director provided the applicant a notice of derogatory information and gave him 60 days to respond. The applicant did not respond. On January 3, 2006, the director issued a notice of intent to deny (NOID) the application, advising the applicant that a record check revealed that he had been arrested on two occasions. The applicant responded by submitting court dispositions, indicating that he had been convicted on three charges. The director asked the applicant to advise as to whether his convictions were for misdemeanors or infractions. The applicant failed to submit anything more. On June 21, 2006, the director denied the application, finding applicant was convicted of these misdemeanors and advised the applicant that he had 30 days to submit additional evidence in support of his appeal. No further submission was made.

The regulation at 8 C.F.R. § 210.3(d)(3) states that an alien who has been convicted of a felony or three or more misdemeanors committed in the United States is ineligible for temporary resident status.

"Misdemeanor" means a crime committed in the United States, either (1) punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or (2) a crime treated as a

misdemeanor under the term "felony," pursuant to 8 C.F.R. § 245a.1(p). For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor. 8 C.F.R. § 245a.1(o).

"Felony" means a crime committed in the United States punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except when the offense is defined by the state as a misdemeanor, and the sentence actually imposed is one year or less, regardless of the term such alien actually served. 8 C.F.R. § 245a.1(p).

According to the evidence in the record, the applicant has the following criminal history:

- On October 3, 1995, the applicant was charged with Reckless Driving – 1st offense. He was convicted on October 1, 1996 of this misdemeanor. (Buffalo County Court, Nebraska Case No. [REDACTED])
- On December 4, 1998, the applicant was charged with Leave Accident – Report within 12 Hours and DUI – 1st offense. He was convicted of both misdemeanor charges on February 17, 1999. (Buffalo County Court, Nebraska Case No. [REDACTED])

The applicant has failed to overcome the adverse evidence, which directly contradicts his employment claim; therefore, he has failed to establish the performance of at least 90 man-days of qualifying agricultural employment during the twelve-month statutory period ending May 1, 1986. He also failed to establish that his three convictions were not disqualifying. 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.