



U.S. Citizenship
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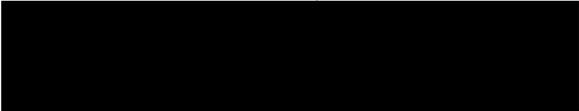


FILE: [REDACTED]
XBA-88-198-03030

Office: LOS ANGELES

Date: DEC 27 2007

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: 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.

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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application for temporary resident status as a special agricultural worker (the SAW program) was initially denied by the Director, Western Service Center (Service Center). The applicant appealed to the Administrative Appeals Office (AAO). The case was remanded for a new decision addressing new evidence provided by the applicant on appeal. A new decision was issued by the Director, Los Angeles District Office, on January 10, 2007. This decision is now before the AAO on appeal. The appeal will be sustained.

The director denied the application because she identified apparent inconsistencies in information provided by the applicant regarding his addresses and employment during the requisite period.

On appeal, the applicant submitted a letter signed by an individual identifying himself as an attorney but not accompanied by a Form G-28 Notice of Entry of Appearance as Attorney. In the absence of a signed Form G-28, we cannot recognize the appearance of counsel. 8 C.F.R. § 292.4. This individual attempted to explain the apparent inconsistencies identified by the director. The applicant also provided documentation of his employment since 1989.

In order to be eligible for the SAW program, 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).

If the applicant cannot provide documentation which shows qualifying employment for each of the requisite man-days, the applicant may meet his or her burden of proof by providing documentation sufficient to establish the requisite employment as a matter of just and reasonable inference. If an applicant establishes that he or she 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 Citizenship and Immigration Services (CIS) 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).

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 [I]f 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. [REDACTED] (E.D. Cal.).

The record indicates the applicant submitted Form I-700 Application for Temporary Resident Status as a Special Agricultural Worker on May 11, 1988. With his application, the applicant submitted Form I-705 Affidavit Confirming Seasonal Agricultural Employment from the foreman and a farm labor contractor at [REDACTED] h. This Form I-705 states that the applicant worked 105 man-days picking prunes, grapes, pears, olives and nectarines from April 1986 to July 1986. Of this time

period, only work conducted during the period from April 1, 1986 to May 1, 1986 is qualifying employment. Therefore, only 30 man-days of qualifying employment may be reasonably inferred from the information provided on the Form I-705 from [REDACTED].

On November 13, 1991, the Director, Western Service Center, denied the application because the Form I-705 the applicant submitted indicated he performed less than 90 man-days of seasonal agricultural employment in the qualifying 12-month period ending May 1, 1986. The applicant appealed this decision to the AAO.

With his first appeal submitted October 2, 1992, the applicant provided an additional Form I-705 signed by [REDACTED] a farm labor contractor for [REDACTED]. The Form I-705 confirms that the applicant worked for [REDACTED] a picking plums, peaches, olives, and grapes for 71 man-days from May 1, 1985 to May 1, 1986. Together with the Form I-705 from [REDACTED] Ranch, this establishes that the applicant performed 101 man-days of qualifying employment during the requisite period.

The District Director, Los Angeles District Office issued a second denial of the application on January 10, 2007 because she identified apparent inconsistencies in information provided by the applicant regarding places of residence during the requisite period. Specifically, according to the director, the applicant stated in his interview with an immigration officer that he entered the United States in 1984. It is noted that the record does not indicate the applicant ever stated that he first entered the United States in 1984. The director also stated that the applicant indicated on his Form I-700 that he resided at [REDACTED] California during the requisite period. The director noted that the applicant submitted a letter from his aunt stating that the applicant had been in the United States since 1980 and was living at [REDACTED], Farmersville, California. Considering that no record exists of the applicant stating that his first date of entry into the United States was 1984, no inconsistency has been identified in the information provided by the applicant related to his date of first entry into the United States. The inconsistency regarding the applicant's address is found not to be relevant to the determination of whether the applicant actually worked the requisite number of man-days during the requisite period.

The director identified another apparent inconsistency. The applicant stated in his interview with an immigration officer that he was living in Texas and worked in construction from May 1985 to December 1985, during the requisite period. This information initially appears to be inconsistent with the Form I-705 provided by [REDACTED] that indicates the applicant worked 71 man-days between May 1, 1985 and May 1, 1986. However, the period mentioned in the Form I-705 from [REDACTED] is the entire requisite period; the requisite period far exceeds the 71 man-days confirmed by the Form I-705; and other evidence indicates the applicant was performing construction work from May to December of 1985. Therefore, it can be reasonably inferred that the applicant performed the 71 man-days of employment during the latter part of the requisite period and after December 1985. The applicant could reasonably have been employed in Texas from May 1985 to December 1985, yet still have completed the 71 man-days of employment with [REDACTED]. This reasonable inference resolves the apparent inconsistency in the evidence provided by the applicant.

On the current appeal, the applicant submitted a letter signed by an individual identifying himself as an attorney but not accompanied by a Form G-28 Notice of Entry of Appearance as Attorney. This individual attempted to explain the apparent inconsistencies identified by the director. It is noted that, without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Since the attorney's assertions are based on facts not in the record, they do not contribute to the satisfaction of the applicant's burden of proof. The applicant also provided documentation of his employment since 1989. This evidence is found not to be relevant to the determination of whether the applicant completed 90 man-days of qualifying employment during the requisite period.

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. Consequently, the applicant is eligible for adjustment to temporary resident status as a special agricultural worker.

In summary, the applicant provided evidence of 30 days of qualifying employment with [REDACTED] Ranch and 71 days of qualifying employment with [REDACTED], for a total of 101 days of qualifying employment. Nothing in the record would lead to a conclusion that the applicant did not work as claimed. As a result, the applicant is found to have proven by a preponderance of the evidence that he engaged in qualifying employment for at least 90 man-days during the 12-month period ending May 1, 1986. Therefore, the applicant is eligible for adjustment to temporary resident status as a special agricultural worker.

ORDER: The appeal is sustained.