



U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE: [Redacted]
XTU-89-036-2140

Office: CALIFORNIA SERVICE CENTER

Date: JUL 03 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:

[Redacted]

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, Director
Administrative Appeals Office

DISCUSSION: The application for temporary resident status as a special agricultural worker (the SAW program) was denied by the Director, Western Service Center (Service Center). The applicant appealed to the Administrative Appeals Office (AAO). The appeal was dismissed by the AAO. The applicant was put into removal proceedings. He raised the issue of his application for temporary resident status with the immigration judge, who made no determination as to this issue. The applicant appealed the decision of the immigration judge to the Board of Immigration Appeals (BIA), who affirmed the immigration judge's decision. The applicant appealed this decision to the United States Court of Appeals for the 9th Circuit (9th Circuit) and the 9th Circuit remanded the case to the AAO for additional fact-finding regarding the timeliness of the applicant's appeal. The applicant submitted additional documentation and explanations on the current 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 statutory period. This decision was based on adverse information acquired by the Immigration and Naturalization Service (the Service), currently Citizenship and Immigration Services (CIS), relating to the applicant's claim of employment for [REDACTED] at various specified farms and ranches in California.

On appeal, the applicant explained the delay in filing his appeal and reaffirmed his original claim of employment for [REDACTED]. The applicant submitted documentation in support of his appeal. The two issues for determination are whether the applicant's appeal was timely filed and whether the applicant demonstrated eligibility for the SAW program.

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).

On the Form I-700 application, the applicant stated that he performed in excess of 90 man-days from May 1985 to December 1985 working for [REDACTED]. This included hoeing, thinning, and picking California sweet pepper and beans; hoeing, thinning and picking broccoli and cauliflower; and picking garlic. In support of his claim, the applicant submitted a Form I-705 Affidavit Confirming Seasonal Agricultural Employment, in which he confirmed 103 days of employment from May 6, 1985 to December 17, 1985, involving the above listed farm labor activities for multiple specified farms and ranches in California. The applicant also submitted an affidavit signed by [REDACTED], which confirms 103 days of employment from May 6 to December 17, 1985. It is noted that [REDACTED] signature on this affidavit appears to match signature exemplars he provided to the Service in 1989.

In a Notice of Intent to Deny issued on March 25, 1991, the director stated that the Service contacted [REDACTED] to verify the credibility of the applicant's claim, and that [REDACTED] explained he was aware of fraudulent affidavits in circulation that bore [REDACTED]'s name. An attempt by the Service to contact [REDACTED] specifically regarding the applicant is not documented in the record. The record contains information provided to the Service by [REDACTED] including a cover letter dated July 30, 1989. In this letter, [REDACTED]

confirmed his awareness that his signature had been falsified and explained that he had given approximately 340 letters to individuals who had worked for him during 1985. [REDACTED] also provided the above referenced exemplars of his signature and a list of 228 names of individuals who had worked for or with him. On September 1, 1989, [REDACTED] provided the Service with a letter including a supplemental list of names that brought the total number of names to 267. In this letter [REDACTED] stated, "The following names are to be added to the list that was sent to you a few weeks ago, my count was wrong due to the fact that I was counting a few names twice, I regret it and please accept my apologies." It is noted that [REDACTED] initially stated he had provided 340 letters, and later provided only 267 names. Although [REDACTED]'s additional letter provided an explanation for an absence of "a few" names, there is a difference of 73 names between [REDACTED]'s initial count and the most recent list he provided.

Service records show that the applicant accepted delivery of the Notice of Intent to Deny (NOID) on April 2, 1991. The NOID appears to have been sent to the address [REDACTED] Tucson, Arizona. According to the applicant's statements in subsequent correspondence, his correct address at this time was [REDACTED] Tucson, Arizona. Also according to the applicant's statements, his correct address has never been [REDACTED] Tucson, Arizona.

The applicant responded to the NOID on April 22, 1991. His response included photocopies of a letter regarding [REDACTED] farm work tax withholding; a letter from [REDACTED] addressed to farm workers and employers; the signature of an official application signed by [REDACTED] an employment confirmation letter confirming [REDACTED] work as a labor contractor agent, together with [REDACTED] business card containing multiple exemplars of his signature; a letter addressed to [REDACTED] regarding his farm worker organizing efforts; a letter addressed to [REDACTED] from the United States Department of Labor; and a letter to [REDACTED] from the Office of the Vice President. The applicant also provided a tally sheet, which he signed multiple times and [REDACTED] signed and notarized confirming a total of 612 work hours from May 6, 1985 to December 17, 1985. The applicant provided a letter signed and notarized by the applicant and [REDACTED] stating, "Regarding your reference to the credibility of my documentation, I have contacted [REDACTED] In his letter (attached), he indicates that I should have been included on his list, and that in fact we did pick: cauliflower and garlic." Attached was a notarized letter from [REDACTED] confirming the applicant had worked with [REDACTED] harvesting crops, [REDACTED] had signed the applicant's employment letter, and the applicant should have been included in the list sent to the Service by [REDACTED]. The applicant also provided a notarized "Verification of I-705" confirming the applicant's employment and signed by [REDACTED]. Lastly, the applicant provided a letter in the Spanish language signed by [REDACTED] and notarized. Two of the letters prepared by the applicant and submitted in response to the NOID, including the cover letter, prominently listed the applicant's correct address, which was [REDACTED] Tucson, Arizona. The envelope in which the response to the NOID was sent by certified mail also listed the applicant's correct address.

On November 20, 1991, the director concluded that the applicant had not overcome the adverse information stated in the notice and had failed to meet his burden of establishing admissibility or eligibility. As a result, he denied the application. The Notice of Decision (decision), which incorrectly listed the applicant's address as [REDACTED] Tucson, Arizona, was returned by the United States Postal Service and marked "Returned to Sender" and "No Such Number." The record indicates the next attempt to provide the applicant of written notification of the decision occurred September 8, 1992.

The applicant sent a letter to the Service on February 28, 1992, stating that he never received a letter of denial, that he had telephoned the Service, and that he was told he should submit a written request that the denial be sent to him. In a subsequent letter dated May 27, 1992, the applicant explained that he still had never received the decision and that he was not informed that his application was denied until he appeared at the Service's Tucson office to attempt to renew his employment authorization. He also explained that he had sought assistance from [REDACTED] and provided details regarding his conversations with [REDACTED]. The applicant included copies of the information he had provided in response to the NOID, as well as a more detailed letter he had asked [REDACTED] to sign but that [REDACTED] had stated was unnecessary. The applicant also included his appeal form and fee payment.

Service records indicate the applicant was sent courtesy copies of the NOID and the decision on September 18, 1992.

On November 22, 1999, the AAO dismissed the appeal, finding that it was untimely filed. The AAO found that the denial was sent to the applicant's most current address of record but returned undelivered. Therefore, the applicant's failure to receive the denial was found to have resulted from his failure to notify the Service of his correct mailing address.

The applicant eventually appealed the decision to the 9th Circuit. In support of his appeal to the 9th Circuit, the applicant explained the circumstances surrounding his initial I-700 application and AAO appeal. The applicant argued that the Service violated his rights when it failed to send the denial to the applicant's proper address. The Service must provide specific reasons for denial and information on how to appeal. 8 C.F.R. § 103.3(a)(i) The applicant claimed that the Service violated his regulatory rights by failing to send the denial to his proper address.

The applicant explained that the SAW regulations require that the Service give the applicant written notice of the denial, together with information regarding the procedure for appeal, the thirty-day filing deadline, and the appeal form. 8 C.F.R. § 103.3(a)(3). He argued that mailing the decision to an address other than the most recent address he had provided to the agency did not constitute proper notice for purposes of the thirty-day appeal deadline. SAW applicants are entitled to due process in the adjudication of their applications. *McNary v. Haitian Refugee Center, Inc.*, 498 US 479, 491 (1991). Due process requires that "notice must be such as is reasonably calculated to reach the interested parties." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 318 (1950). The applicant argued that only notice to the address listed on his most recent correspondence could be "reasonably calculated" to reach him. As an example, the applicant explained the Eight Circuit Court of Appeals' holding that oral notice provided to an INS clerk by a respondent's uncle, together with the clerk's notation of the change, was sufficient notification of address change to the Service such that a deportation hearing notice sent only to the most recent address provided in writing by the respondent failed to conform to due process. *Kamara v. INS*, 149 F. 3d 904, 905-07 (8th Cir. 1988). The applicant explained that the notice he provided was more direct than other forms of notice upheld by courts in the past. He argued that his appeal was timely filed, since he was not given adequate notice of the decision until September 1992 and since he perfected his appeal on June 1, 1992, prior to receiving proper notice.

In its decision, the 9th Circuit found that it was unclear from the record whether the Service properly mailed the decision to the applicant's "last known address." The 9th Circuit identified notice requirements in the context of termination of temporary residence status requiring that "notice to the alien [be] sent by certified mail directed to his or her last known address." 8 C.F.R. § 103.3(a)(3). The 9th Circuit remanded the case to the AAO to determine the applicant's "last known address."

On the current appeal, the applicant explained that his response to the NOID included a cover letter containing his correct address in large, handwritten letters and notarized letter in Spanish containing his correct address. The response to the NOID was sent in a large mailing envelope, which also listed the applicant's correct address as the return address. Still, the decision was issued to the incorrect address and later returned to the Service by the post office with a stamp indicating there was "no such number." The applicant reiterated his efforts to obtain a copy of the decision and his eventual filing of an appeal. The record shows that the applicant informed the Service of his current address prior to decision issuance, and still the Service sent the decision to an incorrect address. When the decision was returned undelivered, the Service failed to resend the decision to the most recent address provided by the applicant. The initial attempt at delivering the decision is found not to be "reasonably calculated" to reach the applicant. *Mullane*, 498 US 491. Since the Service did not provide written notice to the applicant until September 18, 1992, and the applicant filed his appeal prior to this date, on June 1, 1992, the appeal is found to be timely.

In addition, on the current appeal the applicant detailed his objection to the Service's reliance on evidence in its decision that was not provided to the applicant at the time of the decision, including the information [REDACTED] provided to the Service. Lastly, the applicant explained that the evidence whose consideration he questions procedurally also supports a favorable adjudication of his claim. The applicant argued that the lists provided by [REDACTED] leave names unaccounted for. [REDACTED] initially stated that he employed around 340 workers, and his final list only included 267 names. [REDACTED] explained the discrepancy by stating that he counted "a few names twice" but the applicant pointed out that this explanation still leaves names unaccounted for. The applicant also argued that the signature on documents from [REDACTED] submitted by the applicant match exemplars provided to the Service by [REDACTED]. The applicant also submitted a document presenting a side-by-side comparison of the signatures.

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.).

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. 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. The applicant's additional materials are found to adequately explain the absence of the applicant's name from [REDACTED] list and to clarify that the signatures on documents submitted by the applicant match exemplars of [REDACTED] signatures obtained by the Service. Consequently, the applicant is eligible for adjustment to temporary resident status as a special agricultural worker.

In summary, the applicant had clearly marked his current address on paperwork submitted to the Service prior to issuance of the decision. As a result, it is determined that the applicant informed the Service of his most recent address prior to the issuance of the decision, and the Service failed to issue the decision to the applicant's most recent address. The applicant filed the appeal prior to receiving proper notice. Therefore, the appeal is found to be timely. The evidence initially provided by the applicant in support of his I-700 application, including a letter from [REDACTED] confirms employment that is sufficient to fulfill the employment requirements for eligibility for the SAW program. The Service obtained additional information from [REDACTED] that called into question whether the applicant had in fact worked for [REDACTED] including a list of employees and signature exemplars. In his response to the NOID, the applicant provided more recent information from [REDACTED] that confirmed the applicant's eligibility and explained the prior apparently conflicting documentation. In the current appeal, the applicant provided an additional satisfactory explanation of the evidence provided to the Service by [REDACTED] and reiterated that signatures included in the applicant's documents conformed to the exemplars. As a result, the applicant is found to have proven by a preponderance of the evidence that he engaged in qualifying agricultural 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. The application for temporary residence as a special agricultural worker is approved.