



U.S. Citizenship
and Immigration
Services

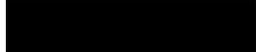
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FILE:



Office: NEBRASKA SERVICE CENTER

Date: JUL 09 2007

XYA 88 190 1034

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:

SELF-REPRESENTED

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for temporary resident status as a special agricultural worker was initially denied by the District Director, Seattle, Washington. The Director of the Nebraska Service Center subsequently reopened the case and denied the application again, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director initially denied the application on June 17, 1988, 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 [REDACTED] of [REDACTED] in Yakima, Washington.

On appeal, the applicant stated that he had never received any correspondence from the Immigration and Naturalization Service, now Citizenship and Immigration Services, since he received the initial receipt for the filing fee of \$185.00.

The service center director subsequently reopened the case and denied the application again on March 4, 2006, because the applicant failed to provide any evidence to overcome the adverse information regarding the applicant's claimed employment for [REDACTED] at [REDACTED]. The service center director informed the applicant that his prior appeal was still in effect and afforded the applicant 30 days to submit additional evidence to supplement his appeal.

The applicant, in response, submitted an employment letter from a different farmer.

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 section 210(c) of the Act and not ineligible under 8 C.F.R. § 210.3(d). *See* 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).

The applicant filed his Form I-700, Application for Status as a Special Agricultural Worker, on June 12, 1988. The applicant claimed on the application that he worked for [REDACTED] at [REDACTED], Yakima, Washington, for 99 days pruning, thinning, and picking apples, pears, and cherries from May 1, 1985 to May 1, 1986. In support of his application, the applicant submitted a Form I-705 affidavit purportedly signed by [REDACTED] who identified himself as a grower, stating the applicant worked for him at [REDACTED] in Yakima, Washington, for 99 days pruning, thinning, and picking apples, pears, and cherries.

The notes of the officer who conducted the legalization interview indicate that he called [REDACTED] and spoke with the farm's bookkeeper, who informed him that the applicant had never worked there. She also told the officer that the phone number for [REDACTED] on the Form I-705 affidavit was not, and never had been, a valid phone number for that farm.

The district director denied the application on June 17, 1988, because the applicant failed to credibly establish the performance of at least 90 man-days of qualifying agricultural employment during the eligibility period.

On May 15, 1992, the service center director reopened the case and informed the applicant of additional derogatory information regarding his claim of employment for [REDACTED]. Specifically, the service center director informed the applicant that the Forensic Document Laboratory (FDL), United States Immigration and Naturalization Service, had conducted a forensic examination of the Form I-705 affidavit submitted by the applicant, along with 14 other Form I-705 affidavits from [REDACTED]. The FDL compared the applicant's Form I-705 affidavit to known samples of [REDACTED] signature and found the affidavit to be fraudulent as it was not signed by [REDACTED] but rather by another individual. The service center director granted the applicant 30 days to submit evidence to overcome this adverse information. The record does not contain a response from the applicant.

The service center director denied the application again on August 11, 1992, because the applicant failed to submit any evidence to overcome the adverse information regarding his claim of qualifying employment for [REDACTED]. The notice of denial was mailed to the applicant's latest known address, but was returned to the Nebraska Service Center as undeliverable mail.

On January 11, 1993, the service center director provided the applicant with another opportunity to submit evidence to overcome the derogatory information noted above. The record does not contain a response from the applicant.

The service center director subsequently denied the application again on March 4, 2006, because the applicant failed to submit any evidence to overcome the derogatory information concerning the fraudulent Form I-705 affidavit purportedly signed by [REDACTED]. The service center director informed the applicant that his appeal was still in effect and afforded the applicant 30 days to submit additional evidence to overcome the basis for denial of the application.

In response, the applicant submitted a letter dated March 31, 2006, from [REDACTED] of [REDACTED] Produce, [REDACTED] Wapato, Washington, stating that the applicant worked on that vegetable farm for more than 100 days in 1986.

This affidavit is not sufficient to establish that the applicant performed at least 90 man-days of qualifying agricultural period during the requisite period. [REDACTED] did not provide the exact dates of the applicant's employment on his farm, nor did he provide any information as to the applicant's duties during his employment at that farm. Furthermore, the applicant's failure to list his purported employment for [REDACTED] Produce on the Form I-700 application raises serious questions regarding the credibility of this claim.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, it is incumbent on the applicant to resolve any inconsistencies in the record by independent objective evidence, and

attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

Section 212(a)(6)(C) of the Act provides:

Misrepresentation. – (i) In general. – Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

The applicant submitted a fraudulent employment affidavit in an attempt to establish his eligibility for temporary resident status as a special agricultural worker. By engaging in such action, the applicant has negated his own credibility as well as the credibility of his claim of qualifying agricultural employment during the requisite period. In addition, the applicant rendered himself inadmissible to the United States under any visa classification, immigrant or nonimmigrant pursuant to section 212(a)(6)(C) of the Act by committing acts constituting fraud and willful misrepresentation.

As of the date of this decision, the applicant has failed to submit a statement, brief, or evidence addressing the adverse information relating to the fraudulent Form I-705 affidavit submitted by the applicant in an attempt to establish at least 90 man-days of qualifying agricultural employment during the requisite period. As stated above, doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *See Matter of Ho*, 19 I&N Dec. at 591-92.

The existence of derogatory information that establishes the applicant submitted a fraudulent employment affidavit and made material misrepresentations all seriously undermine the credibility of the applicant's claim of qualifying agricultural employment during the requisite period, as well as the credibility of the documents submitted in support of such claim. Pursuant to 8 C.F.R. § 210.3(b)(1), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. The applicant has failed to submit sufficient credible documentation to meet his burden of proof in establishing at least 90 man-days of qualifying agricultural employment during the requisite period by a preponderance of the evidence as required under 8 C.F.R. § 210.3(b)(1).

Given the applicant's reliance upon documents with minimal or no probative value, it is concluded that he has failed to establish at least 90 man-days of qualifying agricultural employment, as required under section 210(c) of the Act. The applicant is, therefore, ineligible for temporary resident status under section 210 of the Act on this basis.

In addition, the fact that the applicant submitted an a fraudulent employment affidavit and made material misrepresentations in an attempt to establish his qualifying agricultural employment in the United States during the requisite period rendered him inadmissible to this country pursuant to section 212(a)(6)(C) of the Act. By filing the instant application and submitting a fraudulent

document, the applicant has sought to procure a benefit provided under the Act through fraud and willful misrepresentation of a material fact. Because the applicant has failed to provide independent any objective evidence to overcome, fully and persuasively, our finding that he submitted a fraudulent document, we affirm our finding of fraud. This finding of fraud shall be considered in the current proceeding as well as any future proceeding where admissibility is an issue. The applicant failed to establish that he is admissible to the United States as required by 8 C.F.R. § 210.3(b)(1). Consequently, the applicant is ineligible to adjust to temporary residence under section 210 of the Act on this basis as well.

ORDER: The appeal is dismissed with a finding of fraud. This decision constitutes a final notice of ineligibility.

FURTHER ORDER: The AAO finds that the applicant knowingly submitted fraudulent documents in an effort to mislead Citizenship and Immigration Services and the AAO on elements material to his eligibility for a benefit sought under the immigration laws of the United States. Accordingly, he is inadmissible under section 212(a)(6)(C) of the Act.