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U.S. Citizenship
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Services

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FILE:

[Redacted]
XEC 88 192 0138

Office: CALIFORNIA SERVICE CENTER

Date: JUL 16 2007

IN RE:

Applicant: [Redacted]

PETITION:

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 the matter 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 denied, reopened, and denied again by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant failed to submit sufficient evidence to establish at least 90 man-days of qualifying agricultural employment during the period from May 1, 1985 to May 1, 1986.

On appeal, the applicant has not submitted a statement or any additional evidence to overcome the basis for denial of the application.

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).

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. *United Farm Workers (AFL-CIO) v. INS*, Civil No. S-87-1064-JFM (E.D. Cal.).

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to establish at least 90 man-days of qualifying agricultural employment during the period from May 1, 1985 to May 1, 1986. Here, the submitted evidence is not relevant, probative, and credible.

On the Form I-700 application, the applicant claimed to have worked for [REDACTED] of Indio, California, for 15 days from 1984 to 1986 working with "pumpkins, raisins, and melons;" for [REDACTED] of Indio, California, for 60 man-days in 1986 working with "pumpkins, raisins, and melons;" and, for American Agri-Corp in Indio, California, for 90 man-days in 1986 working with "pumpkins, raisins, and melons." The applicant did not provide any documents from these employers to corroborate his claim of qualifying agricultural employment during the requisite period.

The director initially denied the application on November 2, 1990, because the applicant failed to appear for his interview as scheduled.

On April 9, 2001, the applicant filed an appeal from the denial decision. On appeal, the applicant stated that he was awaiting a full report on his Freedom of Information Act (FOIA) request and would submit additional evidence upon receipt of a copy of the record of proceeding.

The director subsequently reopened the case and provided the applicant with another opportunity to be interviewed. The applicant appeared for his interview on January 27, 2004. At the time of his interview the applicant provided evidence indicating that he worked for farm labor contractor [REDACTED] from April 1, 2002 to January 3, 2004, but he did not provide any evidence to establish the performance of qualifying agricultural employment during the period from May 1, 1985 to May 1, 1986. At the conclusion of his legalization interview, the applicant was handed a Form I-72 notice granting him thirty days to submit proof of qualifying agricultural employment during the period from May 1, 1985 to May 1, 1986. The applicant, in response, submitted a Form I-705 affidavit signed by [REDACTED], who identified himself as a foreman. Mr. [REDACTED] indicated that the applicant worked for farm labor contractor [REDACTED] at various farms in the Fresno, California, area for 95 man-days "prunning [sic], thinning, and harvesting peaches, plums, nectarines, and oranges" during the period from May 1985 to May 1986.

On December 14, 2006, the applicant was mailed a notice informing him of the director's intent to deny the application unless he provided copies of employment records or earnings statements signed by his foreman or another representative of his employer verifying that the records were true and correct. The applicant was granted 30 days to respond to the notice of intent to deny. The record does not contain a response from the applicant.

On February 15, 2007, the director denied the application again because the applicant failed to provide sufficient evidence to establish at least 90 man-days of qualifying agricultural employment during the requisite period. The director informed the applicant that his appeal was still in effect and granted him 30 days to submit additional evidence to corroborate his claim of qualifying agricultural employment during the requisite period. The applicant did not submit any additional evidence to corroborate his claim of qualifying agricultural employment for farm labor contractor [REDACTED].

The Form I-705 signed by [REDACTED] appears to have been altered. The original employee name and address appear to have been eradicated and the applicant's name and address substituted. Furthermore, the original employer and fieldwork information on the Form I-705 appear to have been altered and the applicant's purported work for [REDACTED] substituted. The fact that the applicant submitted an altered document in an attempt to establish qualifying agricultural employment during the requisite period has seriously impaired the credibility of his claim.

Doubt cast on any aspect of the evidence may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an 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, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 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.

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.

The AAO issued a notice to the applicant on June 12, 2007, informing him that it was the AAO's intent to dismiss his appeal based on the fact that he submitted an altered employment affidavit in an attempt to establish at least 90 man-days of qualifying agricultural employment during the requisite period. The AAO further informed the applicant that he was inadmissible to the United States under section 212(a)(6)(C) of the Act as a result of his actions. The applicant was granted fifteen days to provide substantial evidence to overcome, fully and persuasively, these findings. However, 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 altered 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 an altered 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 altered 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 an altered employment affidavit, 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 objective evidence to overcome, fully and persuasively, our finding that he submitted an altered document, we affirm our finding of fraud. 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 a fraudulent document 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.