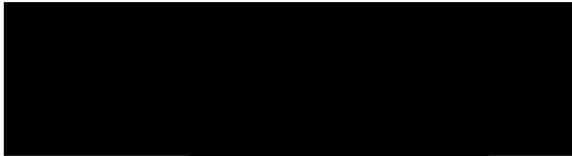


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and Immigration
Services

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FILE:

XEC 88 113 1220

Office: CALIFORNIA 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: 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.

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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for temporary resident status as a special agricultural worker was denied by the Director, Western Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director denied the application because the applicant failed to establish that he performed at least 90 man-days of qualifying agricultural employment during the eligibility period. This decision was based on adverse information acquired by the Immigration and Naturalization Service (the Service), now Citizenship and Immigration Services, regarding the applicant's claim of employment for [REDACTED]

On appeal, the applicant reiterates his claim of at least 90 man-days of qualifying agricultural employment for [REDACTED]. He further claims to have worked at other farms during the requisite periods; however, he did not submit any independent evidence to corroborate his claims.

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, provided he is otherwise admissible under section 210(c) of the Act and is 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 113 man-days thinning and weeding watermelons, cantaloupe, and onions for farm labor contractor [REDACTED] in Wellton, Arizona, during the period from May 1985 to May 1986. In support of the claim, the applicant submitted a Form I-705 affidavit and a separate employment statement, both purportedly signed by [REDACTED]

In attempting to verify the applicant's claimed employment, the Service acquired information that contradicted the applicant's claim. [REDACTED] and four co-defendants were convicted by jury trial of seventeen felony counts of Conspiracy, Aiding and Abetting, and the Creation and Supplying of False Application Documents for Adjustment of Status, in U.S. District Court, Phoenix, Arizona, CR 88-153-PHX-RGS. In addition, a Service investigation revealed that [REDACTED], the applicant's purported employer, did not employ or supervise agricultural employees in any capacity during the qualifying period. Furthermore, Yuma County tax and real estate records indicate that there was no agricultural land in Yuma County that was owned or operated by [REDACTED]

On December 18, 1991, the applicant was advised in writing of the adverse information obtained by the Service, and of the Service's intent to deny the application. The applicant was granted thirty days to respond. The notice was mailed to the applicant at his most current address, but was returned to the Service as undeliverable mail.

The director determined that the applicant had failed to overcome the adverse evidence, and denied the application on January 31, 1992.

On appeal, the applicant states:

I did work in the fields with [REDACTED] during the qualifying period. I do not know what fraud he committed with other workers but I started coming into the United States since 1979 to work in the fields and groves. I did work with John in Welton and Dateland and another small town in Arizona. I worked in Red Mountain Ranch near Dateland, Arizona. From there I went to Tulare, California in the San Joaquin Valley weeding cotton and in the [sic] nectarines and plums.

However, the applicant did not submit any evidence to overcome the adverse information regarding [REDACTED]. Nor did he provide any evidence to corroborate his claim of work for other farmers during the qualifying period.

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.).

The adverse information acquired by the Service regarding the applicant's alleged employment for [REDACTED] directly contradicts the applicant's claim. The applicant has not overcome this derogatory evidence. Therefore, the documentary evidence submitted by the applicant cannot be considered as having any probative value or evidentiary weight.

The applicant has failed to credibly establish 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 ineligible for adjustment to temporary resident status as a special agricultural worker.

It is noted that the applicant's Federal Bureau of Investigation (FBI) fingerprint results report reveals the following offenses:

1. The applicant was arrested by the United States Border Patrol on August 24, 1988, and placed in removal proceedings. The removal proceeding was administratively terminated by an Immigration Judge on September 14, 1988. (Record Number [REDACTED])
2. On March 2, 1997, the applicant was arrested in Sioux City, Iowa and charged with operating a motor vehicle under the influence of alcohol in violation of section 321J-2 of the Iowa Statute, a misdemeanor. The fingerprint results report indicates that the applicant pled guilty to this charge on June 12, 1997, in the Woodbury County District Court, Woodbury County, Iowa. The court ordered the applicant to pay a fine of \$650. (Case Number [REDACTED])
3. On November 14, 1999, the applicant was arrested in Dakota County, Nebraska, and charged with felony driving under the influence of liquor, 4th offense, in violation of section 5404 of the Nebraska statute, a felony. The fingerprint results report indicates that on November 16, 1999, the applicant was convicted in the Dakota County Court, Dixon County, Nebraska, on the amended charge of driving under the influence of liquor, third offense, in violation of section 5435 of the Nebraska statute, a misdemeanor. The court revoked the applicant's driver's license for 15 years and ordered the applicant to serve 120 days in jail and to pay \$600 in court costs. (Docket Number [REDACTED])
4. On May 22, 2000, the applicant was arrested in Dixon County, Nebraska, and charged with driving with a suspended license, first offense, in violation of section 5429 of the Nebraska statute, a fourth-degree felony. On September 25, 2000, the applicant was convicted of this charge in the Dixon County District Court, Dixon County, Nebraska. The court ordered the applicant to serve 15 days in the county jail and placed him on probation for a period of 36 months. (Docket Number [REDACTED])

It appears that the applicant may be ineligible for temporary resident status as a special agricultural worker due to his felony conviction. 8 C.F.R. § 210.3(d)(3). Since the record does not contain any court documents revealing the final court dispositions of the arrests detailed in Nos. 2, 3, and 4 above, the AAO will not make a finding at this time that the applicant is statutorily ineligible for temporary resident status as a special agricultural worker based on his criminal record. However, these offenses must be addressed in any further proceeding before CIS.

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