



U.S. Citizenship
and Immigration
Services

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LL

[REDACTED]

FILE:

[REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date: JUL 24 2007

XLA 88 050 3011

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. 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 denied by the Director, Western Service Center. The matter 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 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]

On appeal, the applicant requested a copy of the record of proceeding and indicated that he would submit a brief and/or additional evidence within 30 days of receipt of a copy of the record.

On March 12, 1993, the Chief of the Legalization Appeals Unit, now the AAO, remanded the case to the service center director for compliance with the applicant's request. The Western Service Center mailed a copy of the record of proceeding to the applicant on April 15, 1994.

It is noted that the District Director, Los Angeles, California, subsequently re-interviewed the applicant and provided the applicant with another opportunity to overcome the adverse information regarding the applicant's claim of qualifying agricultural employment for [REDACTED] at [REDACTED]. On April 12, 2007, the district director denied the application again because the applicant had not overcome the adverse information regarding his claim of qualifying employment for [REDACTED]. The district director further found that the applicant had not submitted sufficient evidence to establish his amended claim of qualifying agricultural employment for foreman [REDACTED] at [REDACTED] in Blythe, California.

The applicant filed an appeal from the district director's decision on May 3, 2007. Since the original appeal was still pending when the district director issued the new denial and the applicant filed an appeal from that denial, the district director's denial decision and the appeal from that decision will be merged into, and be considered as part of, the original appeal.

On appeal, counsel reiterates the applicant's claim of 103 man-days of qualifying agricultural employment for [REDACTED] and [REDACTED] and submits copies of documents previously submitted in support of the applicant's claim.

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). 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 I-700 application, the applicant claimed 103 man-days picking cantaloupes for [REDACTED] at [REDACTED] in Imperial County, California from May 1985 to August 1985.

In support of the claim, the applicant submitted a Form I-705 affidavit and a notarized letter of employment, both purportedly signed by [REDACTED]. In both the affidavit and letter, [REDACTED] indicated that he was a foreman at [REDACTED].

In attempting to verify the applicant's claimed employment, the Immigration and Naturalization Service (the Service), now Citizenship and Immigration Services, acquired information that directly contradicts the applicant's claim. Specifically, [REDACTED] of [REDACTED] stated that [REDACTED] worked as a foreman a total of five days in June 1985 and ten days in September, October, and November 1985.

On February 24, 1992, 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. In response, the applicant submitted a copy of a letter dated November 10, 1988, from [REDACTED] Payroll Clerk at [REDACTED] located in Blythe, California. [REDACTED] stated that [REDACTED] worked for [REDACTED] Agricultural Services as a foreman during the farm's seasonal produce harvest in the years 1985 and 1986. [REDACTED] explained that [REDACTED] Agricultural Services was formerly a subsidiary company of [REDACTED] but was no longer in business. [REDACTED] stated that [REDACTED] was currently employed by [REDACTED] as a foreman. However, [REDACTED] did not state that the applicant performed at least 90 man-days of qualifying agricultural employment at [REDACTED] during the requisite period.

The applicant also submitted a fill-in-the-blank employment affidavit dated March 9, 1992, from [REDACTED] [REDACTED] who identified himself as a foreman, stated that the applicant worked for him for 115 man-days cutting and packing lettuce in the period from October to December 1985 to January to March 1986. [REDACTED] did not state provide any information as to the farm where the applicant allegedly worked during the qualifying period.

The director determined that the applicant had not overcome the adverse information regarding his claim of qualifying agricultural employment for [REDACTED] at [REDACTED] and denied the application. The director further found that the applicant had not established 115 man-days of qualifying agricultural employment for foreman [REDACTED] at [REDACTED].

On appeal, counsel for the applicant reaffirms the applicant's claims of employment for [REDACTED] and [REDACTED] and submits copies of documents previously submitted in support of the application.

Counsel asserts that [REDACTED] the immigration document preparer who helped the applicant complete the Form I-700 application, did not ask the applicant if he had worked for farmers other than [REDACTED] during the period from May 1, 1985 to May 1, 1986. However, counsel does not any evidence to overcome the fact that an official of [REDACTED] indicated that [REDACTED] worked as a foreman for this enterprise a total of five days in June 1985 and ten days in September, October, and November 1985.

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).

An applicant raises serious questions of credibility when asserting an entirely new claim to eligibility in response to the notice of intent to deny or on appeal. The instructions to the application do not encourage applicants to limit their claims; rather, applicants are encouraged to list multiple claims, as they are instructed to show the most recent employment first.

Larger issues of credibility arise when an applicant claims employment which is called into question through Service investigation, and later attempts to establish eligibility with a different employer, heretofore never mentioned to the Service. For this reason, the applicant's new claim of employment for [REDACTED] will not serve to fulfill the qualification requirements necessary for status as a special agricultural worker.

The derogatory information acquired by the Service regarding the applicant's employment for [REDACTED] at [REDACTED] directly contradicts the applicant's initial claim. Specifically, an official of this enterprise indicated that [REDACTED] had only worked as a foreman for fifteen days during the eligibility period. The applicant has not overcome such derogatory evidence regarding his original claim of employment.

The validity of the applicant's amended claim on appeal must be deemed questionable at best. Under these circumstances, it cannot be concluded the applicant has credibly established that he performed at least 90 man-days of qualifying agricultural employment during the statutory period ending May 1, 1986. Consequently, the applicant has not demonstrated his eligibility for temporary resident status as a special agricultural worker.

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