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U.S. Citizenship
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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **JUL 31 2007**
XEC 88 170 02222

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: 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. Any further inquiry must be made to that office.

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 Regional Processing Facility, reopened, and denied again by the Director, Western Service Center. The case was remanded by the Legalization Appeals Unit (LAU), now the Administrative Appeals Office (AAO). The District Director, San Francisco, California reopened, and denied the application again. The appeal will be sustained.

On January 10, 1990, the Director, Western Regional Processing Facility, denied the application because the applicant failed to submit a complete application within the time permitted as required of S-9 preliminary applicants.

On March 25, 1991, the Director, Western Service Center, denied the application because the applicant submitted employment documents which differed significantly from the claim of employment as set forth in the original Form I-700 application without an adequate explanation. The director also 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 conclusion was based on derogatory evidence obtained from the legacy Immigration and Naturalization Services (INS) attempts to verify the applicant's claimed employment. Specifically, the applicant was informed that [REDACTED], the affiant who attested to the applicant's agricultural employment was not authorized to sign employment documents for High Mite, Inc.

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 Immigration and Nationality Act (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).

At the time of entry into the United States, the applicant's Form I-700 application indicated employment for [REDACTED] laboring in olives for over 90 man-days from March 1985 to April 1986. However, when the applicant later presented the application package to the legacy INS, the Form I-700 had been amended to include over 90 man-days laboring in lettuce for [REDACTED] at High Mite from November 1985 to March 1986.

On August 5, 1994, the LAU remanded the case as it was determined that because [REDACTED] was not authorized to sign employment documents it did not preclude him from attesting to the applicant's claimed employment. It was also noted that while it was true the applicant did not provide an explanation for his revised claim of employment, the fact remains that there was no record of an interview conducted subsequent to the presentation of the applicant's application to the legalization office.

The director withdrew the previous decision and reopened the proceedings for review. The record reflects that the applicant was subsequently interviewed by the Fresno Office on October 25, 2006.

On January 16, 2007, in denying the application, the district director noted that the applicant had claimed employment for High and Mighty Farms during the statutory period, and that the applicant's name did not appear on the employer's records for 1985 and 1986.

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.).

The derogatory evidence, used as the basis for the denial of the application, however, was not entered into the record of proceeding. When any decision will be based, in whole or in part, on derogatory evidence, such evidence *must* be incorporated into the record. The employment documents presented by the applicant reflect employment at High and Mite, Inc. There is no indication in the record that "High and Mighty Farms" and "High and Mite, Inc." are one and the same enterprise. The record does not contain any evidence verifying the existence of "High and Mite, Inc.," or that attempts to verify the existence of this entity have been unsuccessful. As such, the adverse evidence currently in this record is insufficient to support the director's finding in this case.

In viewing this case in a light most favorable to the applicant, it is concluded that the applicant may have worked more than 90 man-days for his employer during the twelve-month eligibility period ending May 1, 1986. The documentation submitted by the applicant throughout the application process appears to be consistent and to corroborate the applicant's claim. Such documents, including affidavits submitted by individuals who are willing to testify in this matter, may be accorded substantial evidentiary weight. It is, therefore, concluded that 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.

ORDER: The appeal is sustained. The director shall complete to adjudication of the application.