



U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE: [REDACTED]  
XYU 88 138 01007

Office: CALIFORNIA SERVICE CENTER

Date: JUN 12 2007

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Temporary Resident Status under 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.

*Maura Deadrick*  
for Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application for temporary resident status under was denied by the Director, Western Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed with a separate finding of fraud and inadmissibility.

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, in part, on adverse information acquired by the Service (now known as Citizenship and Immigration Services or CIS) relating to the applicant's claim of employment for [REDACTED]

The applicant submitted a timely appeal.<sup>1</sup>

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 to have worked for only one employer, [REDACTED], for 110 man-hour days thinning, weeding, harvesting watermelons, cantaloupes, and onions from May 1985 and May 1986.

In support of his claim, the applicant submitted a Form I-705 affidavit from [REDACTED]. On his affidavit, [REDACTED] indicated that the applicant worked for him for 110 man-days between May 1, 1985 and May 1, 1986.

On November 2, 1988, the director requested additional information and clarification of evidence of qualifying employment. The director gave the applicant thirty days to submit additional documentation. The applicant failed to respond to the request.

In the course of attempting to verify the applicant's claimed employment, the Service acquired information that contradicted the applicant's claim. [REDACTED] was convicted of seventeen felony counts of conspiracy, aiding and abetting, and creation and supplying of false application documents for adjustment of status. In a notice of intent to deny the application, the director informed the applicant of the adverse information. The director gave the applicant thirty days to respond. The applicant failed to respond.

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<sup>1</sup> The director initially denied the application on October 10, 1990. The applicant timely appealed on November 13, 1990. On December 30, 1996, the AAO remanded the case and stated that the applicant could file an appeal without fee should his case be denied again. The director again denied the application on September 29, 2005. The applicant attempted to file an appeal on October 27, 2005. The appeal was rejected because the proper fee was not attached. The applicant resubmitted his appeal on November 8, 2005 with the proper fee.

On January 31, 1992, the director denied the application. The applicant submitted a timely appeal. On appeal, the applicant submits evidence indicating that he worked for ██████ Packing Company from May 1, 1985 through May 1, 1986. The applicant failed to explain why he had failed to mention ██████ Packing Company as a former employer on his Form I-700 application. It is incumbent upon the petitioner 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, 591-92 (BIA 1988).

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.

The applicant has the burden of proof to establish his eligibility by a preponderance of the evidence. 8 C.F.R. § 210.3.

In his NOID, the director noted that the applicant claimed employment with ██████ at ██████ ██████'s farm located in Wellton, Arizona. The applicant submitted a Form I-705 affidavit signed by ██████ stating that the applicant worked for ██████ at his farm located in Yuma County, Arizona. According to a fraud investigation conducted by the Service, a survey of all agricultural land in the area where ██████ fraudulent documents claimed he had employed illegal aliens during the Special Agricultural Worker (SAW) qualifying period was conducted. No one was located that had any knowledge of ██████ working or employing anyone during the SAW qualifying period. A review of Yuma County tax and real estate records showed that there was no agricultural land whatsoever in Yuma County that was owned by a person under the name of ██████ thus negating ██████'s claims of employing illegal aliens on a farm he owned in Yuma County during the SAW qualifying period. As a result of this fraud investigation, ██████ was convicted by jury trial of seventeen felony counts of Conspiracy, Aiding and Abetting, and Creation and Supplying of False Application Documents for Adjustment of Status in U.S. District Court, Phoenix, Arizona, ██████

On appeal, the applicant admitted to the fraud. Specifically, he admitted that he purchased a letter from ██████ to send to the Service and "regret[s] . . . being involved with a dishonest letter." He also averred that he worked 95 man-days during the qualifying period for foreman ██████ at the ██████ Packing Company of Yuma. He submitted statements from friends who knew the applicant while he worked for Castro Packing Company.

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.

Under BIA precedent, a material misrepresentation is one which "tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he be excluded." *Matter of S- and B-C-*, 9 I&N Dec. 436, 447 (BIA 1961).

The applicant signed the Form I-700, thereby certifying under penalty of perjury that the application is true and correct.

By filing the instant application and submitting a fraudulent Form I-705 affidavit, the applicant has sought to procure a benefit provided under the Act using fraudulent documents. Given the evidence and the applicant's admission that he purchased a letter from [REDACTED] to submit to the Service in support of his application, we make a finding of fraud. In addition, an applicant for temporary resident status must establish under the provisions of section 210(c) of the Act that he or she is admissible as an immigrant and not ineligible under 8 C.F.R. 210.3(d). Because of his attempt to procure a benefit under the Act through fraud, we find that the applicant is inadmissible under section 212(a)(6)(C) of the Act.

Regarding the instant application, the applicant's failure to submit independent and objective evidence to overcome the preceding derogatory information seriously compromises the credibility of the applicant and the remaining documentation. 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 applicant has, therefore, failed to establish that he performed 90 man-days of fieldwork in perishable commodities during the qualifying period, as required under section of the Act. In addition, because he has attempted to procure a benefit under the Act through fraud, he is inadmissible under section 212(a)(6)(C) of the Act. Given this, he is ineligible for temporary resident status under section 210 of the Act.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

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**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.