

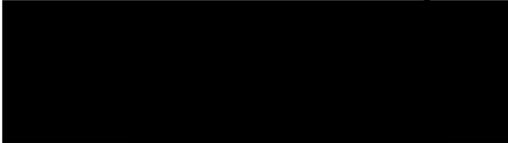


U.S. Citizenship
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FILE: [REDACTED]
XNK 89 058 0241

Office: CALIFORNIA SERVICE CENTER

Date: JUN 21 2007

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. 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's claimed employment with [REDACTED] was considered non-qualifying employment.

On appeal, the applicant reiterates his claim of more than 90 man-days of qualifying agricultural employment during the period from May 1, 1985 to May 1, 1986, and submits additional affidavits in support of his claim.

An applicant must have engaged in qualifying agricultural employment, which has been defined as "seasonal agricultural services," for at least 90 man days during the twelve month period ending May 1, 1986, pursuant to 8 C.F.R. 210.1 (h).

Section 210(h) of the Act, 8 U.S.C. 1160, defines "seasonal agricultural services" as the performance of field work related to the planting, cultural practices, cultivating, growing, and harvesting of fruits and vegetables of every kind and other perishable commodities, as defined in regulations by the Secretary of Agriculture.

On the Form I-700, Application for Temporary Resident Status as a Special Agricultural Worker, the applicant claimed one year of agricultural work with wheat, hay, hogs, and cattle for [REDACTED] at [REDACTED], located in Hemphill, Texas, from May 1985 to May 1986. In support of his claim, the applicant submitted a Form I-705 affidavit from [REDACTED] stating that the applicant worked six days a week for him at [REDACTED] located in Hemphill, Texas, performing general work with wheat, hay, hogs, and cattle. The applicant also submitted a separate affidavit dated April 29, 1988 from [REDACTED] stating, "[REDACTED] worked with my purebred hogs and cattle and built fence."

On March 21, 1989, the applicant appeared for his legalization interview. According to the interviewing officer's notes, the applicant stated that the majority of his duties involved working with cattle and hogs. The officer recommended denial of the application because the majority of the applicant's duties at [REDACTED]'s farm did not constitute qualifying agricultural employment.

The director denied the application on July 7, 1992, because the applicant's claimed employment with [REDACTED] was considered non-qualifying employment.

On appeal, the applicant reiterates his claim of at least 90 man-days of qualifying agricultural employment during the requisite period. The applicant states that he submitted employment documents with his Form I-700 application indicating that he did general fieldwork including planting and harvesting wheat. He further states, "[c]onsiderable time was dedicated to preparing fields and planting wheat using a tractor and seeding machine, harvesting and degrading the wheat."

The applicant submits an affidavit dated September 5, 1992, from [REDACTED], who states that he has personal knowledge that the applicant was employed planting and harvesting wheat and working with hogs and cattle at [REDACTED] from May 1985 to May 1986. [REDACTED] states that his knowledge of the applicant's duties is based on the fact that he used to visit the applicant "very often" when the applicant was working for [REDACTED].

The applicant also submitted an affidavit dated September 5, 1992, from [REDACTED] stating that he has personal knowledge that the applicant was employed by [REDACTED] planting and harvesting wheat and working with hogs and cattle from May 1985 to May 1986. [REDACTED] states that his knowledge is based on the fact that he worked at a nearby farm during the period in question and he and the applicant used to socialize after work.

Neither affiant specifies what percentage of the applicant's time was spent planting and cultivating wheat during the qualifying period. They merely state that the applicant worked with wheat crops on [REDACTED]'s farm.

The applicant's claim on appeal that he spent "considerable time" planting and harvesting wheat contradicts his previous statement during his legalization interview that the majority of his duties during his employment for [REDACTED] involved working with cattle and hogs. The applicant has not provided any explanation for this discrepancy in the nature of his duties at [REDACTED] during the qualifying period.

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. Further, it is incumbent on the 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 lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

[REDACTED] specifically stated in his affidavit dated April 29, 1988 that the applicant worked with his purebred hogs and cattle and built fences. [REDACTED] did not mention wheat in his affidavit. [REDACTED] indicated on the Form I-705 that the applicant worked with wheat, hay, hogs, and cattle. Agricultural work with hay, hogs, and cattle does not constitute qualifying employment. Although wheat is considered a qualifying crop, there is no indication in the affidavit or the Form I-705 from [REDACTED] that the majority of the applicant's work on his farm involved the planting and cultivating of wheat. Rather, it appears that the applicant's primary duties involved working with [REDACTED] hogs and cattle. Indeed, the applicant specifically stated during his legalization interview that the majority of his duties involved working with hogs and cattle. In view of the foregoing, it is concluded that the applicant has not established at least 90 man-days of qualifying agricultural employment during the period from May 1, 1985 to May 1, 1986.

The applicant has not submitted sufficient evidence to establish that he performed at least 90 man-days of qualifying agricultural employment during the eligibility period. Consequently, the applicant is ineligible for adjustment to temporary resident status as a special agricultural worker.

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