



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date: MAY 04 2007

XSD 88 224 01034

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.

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 the performance of at least 90 man-days of qualifying agricultural employment during the eligibility period. This decision was based on adverse information acquired by the legacy Immigration and Naturalization Service (INS) relating to the applicant's claim of employment for [REDACTED] at the [REDACTED].

On appeal, the applicant reaffirmed the veracity of his employment with [REDACTED]. The applicant asserts that he submitted additional documentation prior to the issuance of the Notice of Decision.

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 (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 Form I-700 application, the applicant claimed 97 man-days of qualifying agricultural employment for [REDACTED] at the [REDACTED] from March 1985 to March 1986. In support of his claim, the applicant submitted a corresponding Form I-705 affidavit and a separate employment letter signed by [REDACTED].

In the course of attempting to verify the applicant's claimed employment, the legacy INS acquired information which contradicted the applicant's claim. On December 1, 1989, a Service officer spoke to [REDACTED] custodian of employee and payroll records for the [REDACTED]. Ms. [REDACTED] stated that [REDACTED] was employed by the [REDACTED] as a foreman from April 1984 to July 1984, and at no time thereafter. [REDACTED] consequently was not employed at the [REDACTED] during the qualifying period, and could not have witnessed the employment of any applicants claiming to have worked there.

On June 26, 1991, the applicant was advised in writing of the adverse information obtained by the legacy INS, and of its intent to deny the application. The applicant was granted thirty days to respond. According to the director, the applicant failed to submit a response and denied the application on January 31, 1992. The record, however, reflects that the applicant did submit additional documentation that was received on January 29, 1992. The applicant's response will be considered on appeal.

In response to the notice, the applicant submitted a Form I-705 affidavit indicating he worked 92 man-days laboring in lettuce for [REDACTED] at Cook Distributing in Maricopa County, Arizona from May 1, 1985 to May 1, 1986.

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).

An applicant raises serious questions of credibility when asserting an entirely new claim to eligibility. The applicant provides no explanation as to why his claim to have been employed by [REDACTED] during the qualifying period was not advanced initially or at the interview. The instructions to the application do not encourage an applicant to limit his claim; rather they encourage the applicant to list multiple claims as they instruct him to show the most recent employment first. Moreover, as the applicant has not contested the finding that his initial claim was false, his overall credibility is suspect. Furthermore, the applicant's additional claim of employment places him in Arizona at the same time he originally claimed he was working in California. The applicant did not claim any residence in Arizona on his Form I-700 application. Larger issues of credibility arise when an applicant claims employment which is called into question through a legacy INS investigation, and later attempts eligibility with a different employer, heretofore never mentioned to the legacy INS. For these reasons, the applicant's new claim of employment for Robert Dastrup will not serve to fulfill the qualification requirements necessary for status as a special agricultural worker.

The applicant's initial claim is lacking in credibility due to the adverse evidence. The credibility of the applicant's amended claim 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.