



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
XSA 89 054 7080

Office: CALIFORNIA SERVICE CENTER

Date: **NOV 19 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.

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 (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 reiterates his claim of 148 man-days of qualifying agricultural employment for farm labor contractor [REDACTED] during the requisite period.

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 Form I-700 application, the applicant claimed to have performed 148 man-days of qualifying agricultural employment for [REDACTED] harvesting grapes and lettuce at Superior Farms in Kern, California, from September 1985 to March 1986.

In support of the claim, the applicant submitted a Form I-705 affidavit and a separate employment affidavit signed by [REDACTED], who identified himself as a farm labor contractor. [REDACTED] indicated that the applicant worked for him harvesting grapes for 42 days and harvesting lettuce for 106 days at Superior Farms in Kern, California, during the period from September 1985 to March 1986. [REDACTED] stated that the applicant was paid in cash.

In attempting to verify the applicant's claimed employment, the Immigration and Naturalization Service, or the Service (now, Citizenship and Immigration Services, or CIS) acquired information that contradicted the applicant's claim. Specifically, [REDACTED], former manager of Superior Farming, stated in a letter dated July 5, 1988, that [REDACTED] provided farm laborers for Superior Farming during the period from January 1, 1985 through February 9, 1985 and from April 1, 1985 through September 7, 1985. This statement contradicts the statements by the applicant and [REDACTED] that the applicant worked for [REDACTED] from September 1985 to March 1986.

On October 21, 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 personal affidavit dated November 5, 1992, in which he attested that he worked for different ranches during the same period but was always paid in cash. He requested additional time for the purpose of obtaining employment verification documents from his other employers. However, the applicant did not provide any

evidence to overcome the adverse evidence regarding his claim of employment for [REDACTED] during the requisite period.

On December 8, 1992, the director concluded the applicant had not overcome the derogatory evidence regarding his claim of employment for [REDACTED] during the requisite period and denied the application.

On appeal, the applicant reiterates his claim of 148 man-days of qualifying agricultural employment for [REDACTED] during the requisite period. The applicant asserts that the Service relied on "third party information" in determining that the applicant's claimed dates of employment for [REDACTED] did not correspond to the dates listed by [REDACTED] in her letter. The applicant states, "I did not work for Superior Farms, nor did they extend an employment letter to me. [REDACTED] was my employer and is the person responsible for verifying where and when I worked."

The applicant's assertions on appeal are incorrect. An alien applying for temporary resident status as a special agricultural worker has the burden of proving by a preponderance of the evidence that he has worked the requisite number of man-days, is admissible to the United States under the provisions of section 210(c) of the Act, is otherwise eligible for adjustment of status. If an applicant cannot provide documentation which shows qualifying employment for each of the requisite man-days, the applicant may meet his burden of proof by providing documentation sufficient to establish the requisite employment as a matter of just and reasonable inference. The inference to be drawn from the documentation provided 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 to 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).

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. *United Farm Workers (AFL-CIO) v. INS*, Civil No. S-87-1064-JFM (E.D. Cal.).

In this case, the applicant has submitted an employment document signed by farm labor contractor [REDACTED]. [REDACTED] of Superior Farming informed the Service that [REDACTED] provided seasonal agricultural workers to Superior Farming during the periods from January 1, 1985 to February 9, 1985, a period outside the qualifying period, and from April 1, 1985 through September 7, 1985. These dates contradict the dates listed by the applicant on his Form I-700 and the dates provided by [REDACTED] in his Form I-705 affidavit. As previously stated, [REDACTED] indicated on the applicant's Form I-705 that the applicant worked for him harvesting grapes and lettuce at Superior Farms from September 1985 to March 1986. The applicant has not provided any explanation for this discrepancy in his claimed dates of employment for [REDACTED] at Superior Farms, nor has he provided any evidence to overcome this adverse information regarding his claim. This contradiction in the applicant's claimed dates of employment for [REDACTED] raises serious questions of credibility regarding the applicant's claim.

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).

The applicant has failed to overcome this adverse evidence, which directly contradicts his employment claim. Therefore, the documentary evidence submitted by the applicant cannot be considered as having any probative value or evidentiary weight, and the burden of proof remains with the applicant to provide credible documentation to corroborate his claim.

The applicant has failed to credibly establish the performance of at least 90 man-days of qualifying agricultural employment during the twelve-month statutory period ending May 1, 1986. Consequently, the applicant is ineligible for adjustment to temporary resident status as a special agricultural worker.

It is noted that the record contains documentation establishing that the applicant pled guilty in the Superior Court of California, County of Kern, to one count of transporting, importing, selling, furnishing, administering, or giving away a narcotic controlled substance in violation of section 11379(a) of the California Health and Safety Code, a felony. The court found circumstances in aggravation with regard to the applicant's guilty plea and ordered the applicant to serve four years in the California State Prison and to pay a restitution fine of \$200. The court subsequently dismissed the applicant's appeal from his conviction on November 28, 1994, and affirmed his felony conviction. [REDACTED]

The applicant is also ineligible for temporary resident status due to his felony conviction. 8 C.F.R. § 210.3(d)(3). Furthermore, the applicant is ineligible for temporary resident status because he has been convicted of a violation of a state regulation relating to a controlled substance (as defined in Section 102 of the Controlled Substances Act, 21 U.S.C. § 802).

Section 212(a)(2)(A)(i)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II). Therefore, the application also must be denied for these reasons.

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).

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