



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: LOS ANGELES

Date:

AUG 22 2008

XLB 89 521 02260

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:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the National Benefits Center. 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 initially denied by the Director, Western Service Center. The matter, which subsequently came before the Administrative Appeals Office (AAO) on appeal, was remanded for further consideration. The Field Office Director, Los Angeles, has since complied with the AAO's instructions and subsequently issued another decision denying the application. The matter is again before the 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 ending May 1, 1986. This determination was based on adverse information regarding the applicant's claim of employment for [REDACTED] at Fowler Packing Company.

On appeal, counsel for the applicant contends that he should have been allowed more time in which to respond to the adverse information cited by the director and further states that the applicant has not been convicted of any criminal offenses.

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 94 man-days of qualifying agricultural employment picking onions, tomatoes, plums and peaches for [REDACTED] at Fowler Packing Company in Fresno County, California from May 1985 to May 1986. In support of his claim, the applicant submitted a corresponding Form I-705 affidavit and a separate man-days breakdown, both signed by [REDACTED], who identified himself as a foreman at Fowler Packing Company.

In its recent attempt to verify the applicant's claimed employment, Citizenship and Immigration Services (CIS) acquired information which contradicted the applicant's claim. Although the AAO found in its prior decision that director's earlier denial was insufficient to find the applicant ineligible for the immigration benefit sought, new adverse information has since been incorporated into a more recent notice of intent to deny (NOID) dated August 17, 2007. Specifically, in letters dated February 23, 1989 and April 25, 1989, [REDACTED] personnel clerk for Fowler Packing Company, advised CIS that [REDACTED] had never been employed by that enterprise. The letter of February 23, 1989 was also signed by [REDACTED], president of Fowler Packing Company. The director further noted that in a letter dated March 2, 1989, [REDACTED] provided a list of labor contractors used by Fowler Packing. Not only was [REDACTED] not included in that list of labor contractors, but [REDACTED] further stated, "Our company has never paid cash for work performed by either employees or labor contractors. All work performed is paid by check." The applicant was allowed 30 days in which to address this adverse information.

In response to the NOID, counsel submitted a letter dated September 27, 2007, asking for an extension of time. It is noted, however, that there is no statute or regulation mandating CIS to granting such an extension. It is further noted that counsel's Form G-28, Notice of Entry of Appearance as Attorney or Representative, is dated September 5, 2007, thereby indicating that the applicant obtained counsel within the 30-day deadline for submitting a response. It is therefore unclear why counsel waited until 41 days

after the NOID was issued to request an extension of time. Regardless, counsel was made aware of the adverse information and could have taken the opportunity to address the grounds for the denial on appeal. Counsel was also given the option of taking an additional 30 days from the date of the appeal submission in order to provide additional evidence and/or information. Instead, counsel marked the box indicating that he was waiving the applicant's right to submit a written brief or statement. As such, the AAO will consider this record complete as presently constituted.

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.).

The affiant in the present matter, [REDACTED] claimed that the applicant was paid cash and that therefore no records exist. However, as discussed above, in the March 2, 1989, [REDACTED] stated that Fowler Packing Company paid its employees and labor contractors paid by check. In other correspondence, [REDACTED] also indicated that Fowler Packing Company "is not affiliated with tomatoes or onions" as claimed on the applicant's documentation.

The personnel clerk of Fowler Packing Company has stated that company has never employed [REDACTED] who claimed to have been the applicant's foreman. The applicant has not overcome this derogatory evidence which directly contradicts his claim. Therefore, the documentary evidence submitted by the applicant cannot be considered as having any probative value or evidentiary weight.

As a final note, the AAO concedes to counsel's assertion that there is no evidence on record that the applicant has been convicted of any crimes. The director's comment suggesting otherwise is therefore withdrawn. However, 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.

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