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U.S. Department of Homeland Security  
Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE  
425 Eye Street N.W.  
BCIS, AAO, 20 MASS, 3/F  
Washington, D.C. 20536



AUG 07 2003

FILE:  OFFICE: CALIFORNIA SERVICE CENTER DATE:

IN RE: Applicant: 

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. The applicant appears to be represented; however, the individual listed as a representative on appeal is not authorized under 8 C.F.R. 292.1 or 292.2 to represent the applicant. The decision will be furnished only to the applicant.

INSTRUCTIONS: Attached is the decision rendered on your appeal. The file has been returned to the Service Center that processed your case. If your appeal was sustained, or if your case was remanded for further action, the Service Center will contact you. 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.

  
for  
Robert P. Wiemann, Director  
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 Bureau relating to the applicant's claim of employment for [REDACTED] at Leal's Labor Contracting.

On appeal, the applicant failed to address the grounds for denial. He stated that he never received a copy of the denial. In addition, the applicant claimed to have worked for Vicente Romero during the qualifying period. The denial and notice of intent to deny were remailed to the applicant on January 29, 1993 and the applicant was furnished with a copy of his legalization record on May 5, 1993. The Bureau also provided the applicant with copies of the decision and the notice of intent to deny on January 28, 2002. The file contains no further response from the applicant.

On the Form I-700 application, the applicant claimed 125 man-days picking, packing and weeding melons and lettuce from June 1985 to December 1985 for [REDACTED] at Leal's Labor Contracting in Calexico, California. In support of the claim, the applicant submitted a corresponding Form I-705 affidavit and a separate employment letter, both signed by [REDACTED] who indicated that he was the applicant's foreman.

In the course of attempting to verify the applicant's claimed employment, the Bureau acquired information which contradicted the applicant's claim. On May 31, 1990, [REDACTED] the accountant for Leal's Labor Contracting, informed a Bureau agent that [REDACTED] had never been employed by Leal's Labor Contracting in any capacity. In a letter dated June 1, 1990, Ms. [REDACTED] confirmed that [REDACTED] does not have, nor ever has had, the authority to confirm or deny employment records for Leal's Labor Contracting."

On April 24, 1992, the applicant was advised in writing of the adverse information obtained by the Bureau, and of the Bureau's intent to deny the application. The applicant was granted thirty days to respond. The applicant failed to respond to the notice. The director concluded the applicant had not overcome the derogatory evidence, and denied the application.

On appeal, the applicant claimed that he had not received a copy of the denial. The Bureau subsequently provided copies of the intent to deny and the denial. The applicant also submitted a letter from [REDACTED] indicating the applicant worked from March 1985 to

May 1985 tipping, leafing and picking grapes. The applicant did not reiterate his claim to have worked for Margarito Gonzalez.

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).

An applicant raises serious questions of credibility when asserting an entirely new claim to eligibility on appeal. The applicant provides no explanation as to why his claim to have been employed by [REDACTED] during the qualifying period was not advanced on the I-700 application, during the legalization interview, or in response to the notice of intent to deny. The instructions to the application do not encourage applicants to limit their claims; rather, applicants are encouraged to list multiple claims, as they are instructed to show the most recent employment first.

The qualifying period for eligible agricultural employment is from May 1985 to May 1986. On appeal, the applicant claimed to have worked for [REDACTED] from March 1985 to May 1985. Therefore, because the applicant's initial claim of employment was disavowed by his employer, the additional claim would only establish, at most, 31 man-days, which would not meet the minimum requirement of 90 man-days of qualifying agricultural services performed during the statutory period. Further, as the applicant has not contested the finding that his initial claim was false, his overall credibility is suspect.

Larger issues of credibility arise when an applicant claims employment which is called into question through Bureau investigation, and later attempts to establish eligibility with a different employer, heretofore never mentioned to the Bureau. For this reason, the applicant's new claim of employment for [REDACTED] will not serve to fulfill the qualification requirements necessary for status as a special agricultural worker.

The applicant's initial claim relies exclusively on documents provided by [REDACTED] who presented himself as a foreman at Leal's Labor Contracting. However, according to the bookkeeper of Leal's Labor Contracting, [REDACTED] was never employed by that company in any capacity. The applicant has not provided any evidence or explanation which would serve to 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.



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