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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



File # [redacted] Office: Vermont Service Center

Date: *Aug 08 2015*

IN RE: Applicant: [redacted]

Application: Application for Temporary Resident Status pursuant to Section 210 of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1160

ON BEHALF OF 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application for temporary resident status as a special agricultural worker was initially denied by the Director, Eastern Regional Processing Facility. The case was subsequently reopened and denied again by the Director, Eastern Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The application was initially denied because the applicant failed to establish the performance of at least 90 man-days of qualifying agricultural employment during the eligibility period. This determination was based on adverse information acquired by the Service (now the Bureau) relating to the applicant's claim of employment for [REDACTED] at Kermit Dell Farms.

On appeal from the facility director's denial, the applicant reaffirmed his claim to have performed qualifying agricultural services during the eligibility period. The applicant contended that the documentation he submitted is sufficient to meet his burden of proof regarding the production of evidence to establish that he performed at least 90 man-days of qualifying agricultural employment during the eligibility period.

The record shows that the matter was subsequently reopened by the center director on September 9, 1991, in order to inform the applicant of adverse information relating to his claim of employment and provide the applicant the opportunity to rebut such information. In response, counsel submitted a statement that shall be discussed below. On September 3, 1992, the center director denied the application again and granted the applicant an opportunity to supplement his appeal. However, as of the date of this decision, the applicant has failed to submit any additional material in support of his appeal. Therefore, the record shall be considered complete.

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 INA, 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 100 man-days of qualifying agricultural services from October 1985 to April 1986 for Lee Artis Breedlove at Kermit Dell Farms.

In support of the claim, the applicant submitted a Form I-705 affidavit and a separate employment letter, both signed by Lee Artis Breedlove. The Form I-705 indicated that the applicant harvested beans, squash, peppers, and cucumbers during the course

of his employment.

In the course of attempting to verify the applicant's claimed employment, the Bureau acquired information which cast doubt on the credibility of the applicant's documentation. On April 26, 1989, [REDACTED] pled guilty to conspiracy to supply false documentation to aliens applying for special agricultural worker eligibility in violation of 18 U.S.C. § 371 and 8 U.S.C. § 1160.

In addition, the Bureau was provided with [REDACTED] complete payroll records, including those for Kermit Dell Farms. An examination of these records discloses that only ten of the employees were eligible for special agricultural worker status. The applicant is not one of the ten individuals. Further, payroll records from Kermit Dell Farms, supplied and attested to under oath by [REDACTED] indicate that [REDACTED] did not provide workers to the farm after the week ending May 15, 1985. This information directly contradicts the applicant's claim that he was employed by [REDACTED] at Kermit Dell Farms from October 1985 to April 1986.

On September 9, 1991, 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. In response to the Bureau's notice, counsel submitted a statement that shall be incorporated into the applicant's appeal.

The center director concluded the applicant had not overcome the adverse information, and denied the application.

On appeal, both counsel and the applicant contended that the supporting documentation contained in the record relating to the claim of employment for [REDACTED] at Kermit Dell Farms was sufficient to meet the burden of proof regarding the production of evidence to establish the performance of at least 90 man-days of qualifying agricultural employment during the eligibility period. Both parties declared that pursuant to section 210(b)(3)(B)(iii) of the INA, the employment documentation that was submitted overcame any adverse evidence relating to Lee Artis Breedlove, therefore shifting the burden of proof to the Bureau to show specific evidence to disprove the applicant's claim of employment. However, the applicant's claim of employment and supporting documentation cannot be considered credible because [REDACTED] own payroll records reflect that the applicant was not one of only ten employees that were eligible for special agricultural worker status. Further, the payroll records from Kermit Dell Farms indicate that [REDACTED] did not provide workers to the farm after the week ending May 15, 1985, thereby contradicting the applicant's claim that he worked for [REDACTED] at this enterprise from October 1985 to April 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 as stated in 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 adverse evidence acquired by the Bureau regarding the applicant's alleged employment for [REDACTED] at Kermit Dell Farms directly contradicts the applicant's claim. Specifically, complete payroll records provided to the Bureau confirm that only **ten** individuals employed by [REDACTED] could have qualified for special agricultural status. The applicant's name is **not** included among these ten individuals. In addition, payroll records from Kermit Dell Farms confirm that [REDACTED] did not provide workers to the farm after the week ending May 15, 1985, which directly contradicts the applicant's claim that he worked for [REDACTED] at this enterprise from October 1985 to April 1986. The applicant has not overcome this derogatory evidence.

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.