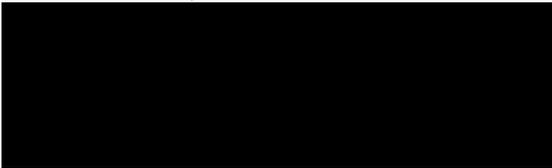


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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536



U.S. Citizenship
and Immigration
Services



FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER

Date:

IN RE: Applicant: [Redacted]

APR 23 2004

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. 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, 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, Director
Administrative Appeals Office

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prevent clearly unwarranted
invasion of personal privacy

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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 case will be remanded for further action.

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 Service relating to the applicant's claim of employment for [REDACTED]

On appeal, the applicant reaffirmed his claim to have performed at least 90 man-days of qualifying agricultural employment during the requisite twelve-month eligibility period for [REDACTED] at [REDACTED]

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).

An applicant for temporary resident status under section 210 of the Act "has the burden of proving by a preponderance of the evidence that he or she has worked the requisite number of man-days, is admissible to the United States... and is otherwise eligible for adjustment of status under this section." 8 C.F.R. 210.3(b). When something is to be established by a preponderance of evidence it is sufficient that the proof only establish that it is probably true. See generally, [REDACTED] Evidence sec. 339 (2d ed. 1972).

On the Form I-700 application, the applicant claimed to have performed 95 man-days of qualifying agricultural employment for [REDACTED] in San Luis Obispo, California, from June 10, 1985 to September 15, 1985. In support of the claim, the applicant submitted corresponding a Form I-705 affidavit along with a separate employment affidavit, both signed by [REDACTED] who is designated as "sharecropper" on the I-705 affidavit.

In attempting to verify the applicant's claimed employment, the Director, [REDACTED], acquired information which contradicted the applicant's claim. Specifically [REDACTED] owner of Domenghini [REDACTED] provided a list of all sharecroppers contracted by their firm during the qualifying period. The applicant's employer [REDACTED] apparently was not included on this list.

On January 27, 1992, the applicant was advised in writing of the adverse information, and of the director's intent to deny the application. The applicant was granted thirty days to respond. In response, the applicant provided an affidavit from the applicant's employer [REDACTED]. In her affidavit [REDACTED] asserted that she served as sharecropper of 3 to 6 acres on the Dominghini Ranch. The affiant [REDACTED] also reaffirms the applicant's having performed agricultural employment for her from June 10, 1985 to September 15, 1985. In addition [REDACTED] provides photocopies of 1985 and 1986 Form 1099 Miscellaneous Income tax statements made out [REDACTED] by [REDACTED]

The director, without specifically addressing the new documents, concluded the applicant had not overcome the derogatory evidence, and denied the application on March 10, 1992. On appeal, the applicant reaffirmed his claim to have performed qualifying agricultural employment for [REDACTED] during the requisite twelve-month eligibility period, describing [REDACTED] as a sharecropper associated with Domenghini [REDACTED]

The applicant's claim was denied due to the fact that the applicant's employer, [REDACTED] evidently was not included on a list of sharecroppers contracted by [REDACTED]. However, upon examination, the photocopied list in question, provided by Domenghini Ranch, includes the name [REDACTED] California, 93442." It is further noted that on the I-705 affidavit signed by [REDACTED] her address is *identical* to that included on the photocopied sharecropper list from [REDACTED]. It is also noted that the photocopied 1985 and 1986 Form 1099 Miscellaneous Income tax statements from Dominghini Ranch, submitted by the applicant in response to the director's notice of intent, are made out to "R.G. Arroyo." It is concluded [REDACTED] the applicant's employer, and [REDACTED] are the *same* person.

The documentation submitted by the applicant throughout the application process is consistent and corroborates his claim. The photocopied Form 1099 Miscellaneous Income tax statements from Dominghini Ranch indicate amounts paid for "rents," which would further support the applicant's employer's description of herself as a "sharecropper." It would appear in this case that the derogatory information casting doubt on the applicant's employment claim evidently resulted from confusion concerning the identity of the applicant's employer, which has subsequently been resolved.

It is, therefore, concluded that the applicant performed the requisite qualifying agricultural employment during the twelve-month statutory period ending May 1, 1986.

An examination of the record of proceedings discloses the presence of a Form G-170 Alien Smuggler Data Input Sheet, indicating that on January 25, 1990, the applicant and a traveling companion were apprehended in the act of attempting to smuggle an alien into the country. Therefore, the director shall examine if any grounds of inadmissibility may arise from this arrest which might impact adversely on the applicant's eligibility for the benefit sought. Furthermore, the director shall conduct another fingerprint check as the validity of the prior check has expired, and then complete the adjudication.

ORDER: The case is remanded for action and consideration consistent with the above.