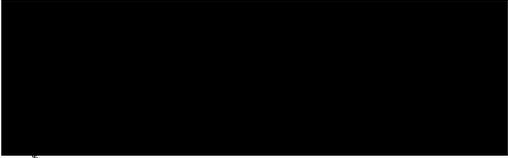




U.S. Citizenship  
and Immigration  
Services

L4



FILE:



Office: CALIFORNIA SERVICE CENTER

Date: AUG 25 2004

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

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, Director  
Administrative Appeals Office

identifying data deleted to  
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 on appeal. The appeal will be sustained.

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 the applicant's failure to supply additional documentation.

On appeal, the applicant provides additional documents.

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 worked with bell peppers from July 3 to August 14, 1985 for Marchini Brothers. In support of his claim, the applicant submitted a photocopy of a corresponding declaration on letterhead stationery from Jeff Marchini and a quarterly record of employment and earnings with the notation "Total days - 42 - by Lisa Marchini."

The applicant also claimed to have weeded cotton for Bart Ramirez for seven days, from May 1, 1985 to May 1, 1986. He provided a supporting affidavit from Mr. Ramirez and a copy of a page from a payroll ledger showing the applicant's name and the notation "7 days B.R."

The applicant further claimed to have picked tomatoes under his own name for Bianchi and Sons for 39 days, from August 1985 to October 16, 1985, and for eight days, from August 19 to October 2, 1985, under the name of [REDACTED]. For each of the Bianchi claims he provided two affidavits, one typed and one handwritten, and a Form W-2 issued by [REDACTED] Office Manager of [REDACTED] Sons.

In attempting to verify the applicant's claimed employment, the director acquired information which seemingly contradicted the applicant's claim. The director contacted [REDACTED] who is said to have stated that the applicant was not known to her as [REDACTED] and that they only issued typed affidavits.

On March 4, 1991 the applicant was advised in writing of the adverse information, and of the director's intent to deny the application. He was also instructed to submit a more specific employment verification letter from [REDACTED]. The applicant was granted thirty days to respond. He failed to respond, and the director denied the application.

On appeal, the applicant provided a more specific affidavit from Richard Marchini that included the information the director had asked for. He submitted another copy of the 1985 Form W-2 from Bianchi and Sons showing Guadalupe Vera earned \$306 that year.

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 director was concerned that the applicant had not shown that he had worked under the name of [REDACTED] and therefore should not be credited with that employment. However, the handwritten affidavit from [REDACTED] showed that the applicant, under the alias of [REDACTED] worked eight days. While [REDACTED] is said to have stated that she did not issue handwritten affidavits, it appears that the applicant filled out most of the affidavit himself, and she then signed it. That may explain why she had said that she had not *issued* handwritten affidavits. If the applicant had intended to commit fraud, it would have been easier, and less questionable, to have simply provided a false affidavit relating to another claim of employment. Instead, he has attempted to show that he also worked for a short time under another name at Bianchi and Sons.

For all of his claims the applicant has submitted contemporaneous evidence as well as affidavits. As stated above, an alien has the burden of proving eligibility by a *preponderance of evidence*, which means that he must prove that his claim is "more likely than not" true. While the applicant's evidence in this matter may not meet a higher standard such as *clear and convincing*, it is concluded that he has established, by a preponderance of evidence, that he worked under the alias as claimed. With that employment credited to him, he is deemed to have engaged in qualifying employment for 96 days during the requisite period.

**ORDER:** The appeal is sustained.