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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: MAY 28 2004

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. 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

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 appeal will be dismissed.

The director denied the application because of serious credibility issues raised by information contained in a prior administrative file regarding this applicant.

On appeal, counsel for the applicant requested a copy of the applicant's legalization file pursuant to the Freedom of Information Act (FOIA), along with a copy of the adverse information relied upon in denying the application. In addition, counsel asserted that the information provided by the director in the Notice of Intent to Deny does not contradict the applicant's claim or supporting documentation.

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 performed 97 man-days of qualifying agricultural employment irrigating almonds for [redacted] at the King Farm in Stanislaus, California, from June 1985 to October 1985. At line 23 of the application, the applicant indicated that he had resided in Turlock, California, from March 1985 to November 1985.

In support of the claim, the applicant submitted a corresponding Form I-705 affidavit and a separate employment declaration, both of which are signed by [redacted]

Subsequently, in attempting to verify the applicant's claimed employment, the Immigration and Naturalization Service (INS) or the Service (now, Citizenship and Immigration Services or CIS) acquired information which contradicted the applicant's claim. A prior Service file, [redacted] contains information which contradicts the information on the applicant's I-700 application. On July 28, 1987, while being interviewed under oath by INS Border Patrol agents in Turlock, California, the applicant admitted that he *first* entered the United States by being smuggled through Tijuana, Mexico on *October 10, 1985*. The applicant stated that he initially stayed in Los Angeles, where he purchased a fraudulent birth certificate and Social Security card from an unknown vendor for the amount of $800. This adverse information directly contradicts the applicant's employment claim.

On February 26, 1992, the applicant was advised in writing of the adverse information obtained by the Service, and of the Service's intent to deny the application. The applicant was granted thirty days to respond. The record contains no response from the applicant to the Service's notice. The director concluded the applicant had not overcome the derogatory evidence and, on June 16, 1992, denied the application.

On appeal, counsel for the applicant requested a copy of the applicant's legalization file pursuant to the Freedom of Information Act (FOIA), along with a copy of the adverse information relied upon in denying the

application. Counsel's request for a copy of the applicant's legalization file, along with the relevant adverse information, was subsequently complied with by the Service.

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 record reveals serious discrepancies between the information included in the applicant's employment claim as set forth in his application Form I-700 and the information he communicated to Border Patrol agents in Turlock, California. The applicant's attorney, on appeal, asserted that the information provided by the director in the Notice of Intent to Deny does not contradict the applicant's claim or supporting documentation. However, the applicant's admission under oath that he *first* entered the United States on *October 10, 1985* directly contradicts his claim to have performed qualifying agricultural employment in Stanislaus, California from *June 1985 to October 1985*, and is also at variance with the information he provided at line 23 of the application, wherein he specified that he had resided in Turlock, California, from *March 1985 to November 1985*. Neither counsel nor the applicant has attempted to address or rebut the serious questions of credibility raised by this mutually contradictory information. Therefore, the documentary evidence submitted by the applicant cannot be considered as having any probative value or evidentiary weight.

The applicant has failed to establish credibly 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.