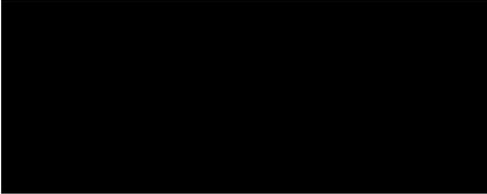




U.S. Citizenship
and Immigration
Services

44



FILE:



Office: CALIFORNIA SERVICE CENTER

Date: OCT 27 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

Identifying data deleted to
protect privacy. This document is printed
on recycled paper.

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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 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 statutory period. This determination was based on questionable documentation regarding the applicant's claim to have worked for Frank Jones.

On appeal, the applicant reaffirms his claim to have performed qualifying agricultural services. He indicates that he also worked for [REDACTED]. The applicant does not, however, submit any evidence in support of his initial claim of employment for [REDACTED] and in fact does not mention [REDACTED]. According to the applicant, he did not claim to have worked for [REDACTED] previously because he thought his initial claim would suffice.

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, provided he is otherwise admissible under section 210(c) of the Act and is not ineligible under 8 C.F.R. § 210.3(d).

On the Form I-700 application, the applicant claimed to have worked for [REDACTED] for 104 days from March 25, 1985 to August 15, 1985. In support of his claim, the applicant submitted a Form I-705 affidavit and another affidavit, purportedly signed by [REDACTED].

The applicant was then interviewed by an immigration officer regarding his claim. The notes of the officer do *not* indicate that the applicant claimed employment for anyone other than [REDACTED] during the qualifying period.

In a notice of intent to deny, the director noted that neither affidavit stated the number of days the applicant worked. Therefore, it was not clear that the applicant had worked at least 90 days. Furthermore, the director pointed out that one affidavit had suspicious alterations with correction fluid, raising questions about the credibility of such document.

The applicant did not respond, and the director denied the application. On appeal from the director's decision of denial, the applicant submits a Form I-705 affidavit from [REDACTED] said to be a foreman at various farms in Fresno County, California. The affidavit indicates the applicant worked 90 days, from September 1985 to June 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. 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).

The director pointed out that there were legitimate concerns regarding the documentation from Frank Jones. The applicant has not addressed those concerns, and has not furnished any additional evidence in support of that claim of employment. Therefore, that claim cannot be deemed persuasive.

An applicant raises serious questions of credibility when asserting an entirely new claim to eligibility on appeal. The instructions to the application do not encourage an applicant to limit his claim; rather they encourage the applicant to list multiple claims, as they instruct him to show the most recent employment first. It is noted that, in this case, the new claim was made more than *five years* after the application was filed. Furthermore, as the applicant has not contested the finding that his initial documents were altered, his overall credibility is suspect.

Also, the affidavit from [REDACTED] is deficient in that it does not show the name of the grower or contractor that [REDACTED] the alleged foreman, worked for. Nor does it show the names of the farms where the employment purportedly took place. Therefore, this claim is not amenable to verification.

The applicant's initial claim is lacking in credibility due to the altered documentation. The credibility of the applicant's new claim on appeal must be deemed questionable at best. Under these circumstances, it cannot be concluded the applicant has established that he performed at least 90 man-days of qualifying agricultural employment during the statutory period ending May 1, 1986. Consequently, the applicant has not demonstrated his eligibility for temporary resident status as a special agricultural worker.

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