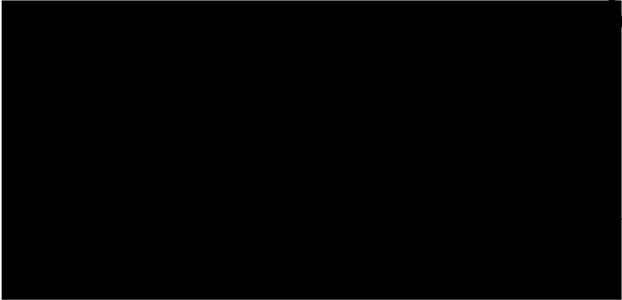




U.S. Citizenship
and Immigration
Services

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

U.S. DEPARTMENT OF HOMELAND SECURITY

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 eligibility period. This decision was based on adverse information acquired by the Immigration and Naturalization Service (the Service) relating to the applicant's claim of employment for [REDACTED]

On appeal, the applicant states that he did work for a man who identified himself as [REDACTED]. He claims that he also worked for [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).

On the Form I-700 application the applicant claimed that he harvested lettuce and greens for [REDACTED] at Guadalupe, Arizona from November 1985 to April 1986. The applicant did not specify the number of days he worked.

In support of the claim, the applicant submitted a corresponding Form I-705 affidavit and a separate employment letter signed by [REDACTED] indicated the applicant worked 152 days. [REDACTED] stated in the letter that the applicant worked for him; he did not indicate whether he, Frank Tapia, was a grower, farm labor contractor, or foreman, although that information is required on Form I-705. [REDACTED] indicated the employment occurred at B.L.K. Farms in Maricopa County, Arizona.

In attempting to verify the applicant's claimed employment, the Service acquired information which contradicted the applicant's claim. On November 22, 1989, in the presence of a Service officer, [REDACTED] gave a sworn statement in which he admitted that he had knowingly created fraudulent employment affidavits for several individuals, and further stated "I have never supplied a true affidavit confirming seasonal agricultural employment..." [REDACTED] stated that his employment at Black (B.L.K.) Farms had been from 1966 to 1975.

The applicant was advised in writing of the adverse information obtained by the Service, and of the Service's intent to deny the application. He was granted thirty days to respond. The applicant responded by stating that he understood the director's points as to his evidence. He stated that he also worked at [REDACTED] in Kern County, California, and provided photocopies of two affidavits purportedly from [REDACTED]. [REDACTED] name was misspelled as [REDACTED] at one place on Form I-705 where the employer would normally provide information.

The director determined that the applicant had failed to overcome the adverse evidence, and denied the application. On appeal, the applicant reiterates that he did indeed work for a man who said he was [REDACTED]. He points out that [REDACTED] had the employment letter that attested to the applicant's employment notarized. He also states that a person who admitted to fraud is not a good source of information.

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 applicant has not provided any documentation from anyone else, such as foremen or coworkers, that would indicate that he worked for [REDACTED]. [REDACTED] admitted that he never signed a true employment affidavit, and that he left the employ of Black (B.L.K.) Farms in 1975. While the applicant suggests that the word of someone who admitted to fraud should not be accepted, the only evidence the applicant has submitted is from that same party. The applicant has not overcome the derogatory evidence which directly contradicts his claim. Therefore, the documentary evidence submitted by the applicant regarding that claim cannot be considered as having any probative value or evidentiary weight.

An applicant raises serious questions of credibility when asserting an entirely new claim to eligibility only after receiving a letter of intent to deny. The applicant indicates that the organization that prepared his application told him that it would be a waste of time to claim other employment, as he had already claimed and documented the employment for [REDACTED]. No corroborative statement from such organization has been submitted. Furthermore, 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. For these reasons, it is concluded that the applicant has failed to establish that he worked for Elmer Andreotti.

The applicant's initial claim is lacking in credibility due to the adverse evidence. The credibility of the applicant's new claim must be deemed questionable at best. Under these circumstances, it cannot be concluded that 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.