



U.S. Citizenship
and Immigration
Services

L4



FILE:



Office: CALIFORNIA SERVICE CENTER

Date: SEP 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.

Robert P. Wiemann, Director
Administrative Appeals Office

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warranted
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 dismissed.

The director denied the application because the applicant failed to establish that he performed 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) regarding the applicant's claim of employment for John L. Johnson.

On appeal, the applicant does not address the adverse information. He claims to have worked for Agripick, Inc.

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). 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 picked citrus for over 90 days for [REDACTED] at Riverbend Farm in Yuma, Arizona during the qualifying period. No evidence of that employment was entered into the record at that time.

When he reported for his interview regarding this application, the applicant mentioned that he had thinned watermelon and onions for 121 days for [REDACTED] during the qualifying period. He provided two affidavits from [REDACTED] in support of this claim. According to the notes of the interviewing officer, the applicant stated he did not work for anyone besides [REDACTED] during that period.

In attempting to verify the applicant's claimed employment, the Service acquired information which contradicted the applicant's claim. [REDACTED] and four co-defendants were convicted by jury trial of seventeen felony counts of Conspiracy, Aiding and Abetting, and the Creation and Supplying of False Application Documents for Adjustment of Status, in U.S. District Court, Phoenix, Arizona, CR 88-153-PHX-RGS. In addition, a Service investigation revealed that [REDACTED] the applicant's purported employer, did not employ or supervise agricultural employees in any capacity during the qualifying period. Furthermore, Yuma County tax and real estate records indicate that there was no agricultural land in Yuma County that was owned or operated by John L. Johnson.

The director attempted to advise the applicant in writing of the adverse information obtained by the Service, and of the Service's intent to deny the application. However, the applicant later indicated that he did not receive any such notice. The director determined that the applicant had failed to overcome the adverse evidence, and denied the application.

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 even challenged, much less overcome, the adverse information regarding his claimed employment for [REDACTED]. Therefore, he cannot qualify for special agricultural worker status on the basis of such claim.

On appeal, the applicant provides a photocopy of an affidavit from [REDACTED] said to be a foreman at [REDACTED] stating that the applicant worked in citrus crops for 97 days during the qualifying period. The applicant also provides photocopies of two affidavits written in Spanish, allegedly from coworkers. The applicant alleges that these three documents relate to his employment with Agripick, that he initially presented "this information" to the Service, and that the officer who interviewed him insisted the letter was fictitious and tore it up.

The three affidavits were attested to in January 1992. As the applicant was interviewed twice in 1988 concerning this application, these 1992 photocopied documents cannot constitute duplicates of what was submitted in 1988 and purportedly torn up. Possibly, what the applicant means to say is that his original evidence was torn up in 1988, and he therefore acquired new evidence in 1992.

The applicant claims a Service officer threw away his original evidence in his presence. If the applicant had later been able to provide copies of the original evidence, such copies, coupled with the lack of original evidence in the record, would strongly support this claim. However, the applicant has provided photocopies of affidavits drawn up about four years after the original evidence was purportedly furnished. This later evidence in no way establishes that other evidence regarding the same claim was originally submitted.

There is no indication that the affidavit from [REDACTED] relates to the applicant's original claim on his 1988 application to have worked at Riverbend Farm for [REDACTED]. However, the affidavits from the alleged coworkers do mention [REDACTED] and the applicant indicates on appeal that all of these documents do relate to his employment with Agripick. Thus, although the applicant has not made it totally clear, it appears the documents submitted on appeal are meant to refer to his having worked for a contractor, Agripick, at Riverbend Farm.

In terms of assessing the credibility of the applicant's [REDACTED] claim, his actions throughout this process must be viewed in their entirety. The applicant only showed one employer, Riverbend, on his application. When he later reported for his interview, he provided evidence from [REDACTED] and

pursued that claim. However, he has not even challenged the director's conclusion that his claim to have worked for [REDACTED] was fraudulent. This greatly diminishes the applicant's overall credibility.

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.