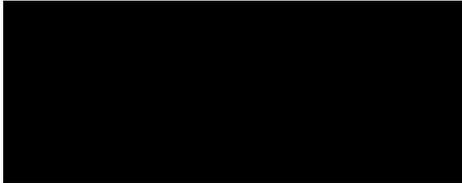


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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: AUG 31 2005

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. 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, remanded by the Legalization Appeals Unit (LAU), now the Administrative Appeals Office (AAO) and again denied by the Director, Western Service Center. The matter is now before the AAO 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. The decisions were based on evidence adverse to the applicant's claim of employment for [REDACTED]

On appeal, the applicant states that he has overcome the adverse evidence in his case. The applicant submitted additional evidence.

A Group 1 special agricultural worker is a worker who has performed qualifying agricultural employment in the United States for at least 90 man-days in the aggregate in each of the twelve-month periods ending May 1, 1984, 1985, and 1986, and has resided in the United States for six months in the aggregate in each of those twelve-month periods. 8 C.F.R. § 210.1(g)

A Group 2 special agricultural worker is a worker who during the twelve-month period ending on May 1, 1986, has performed at least 90 man-days in the aggregate of qualifying agricultural employment in the United States. 8 C.F.R. § 210.1(h)

An applicant for temporary resident status under section 210 of the Act "has the burden of proving by a preponderance of the evidence that he or she has worked the requisite number of man-days, is admissible to the United States... and is otherwise eligible for adjustment of status under this section." 8 C.F.R. § 210.3(b). When something is to be established by a preponderance of evidence it is sufficient that the proof only establish that it is probably true. See generally, McCormick, Evidence sec. 339 (2d ed. 1972).

On his application the applicant claimed 95 man-day of qualifying agricultural employment for [REDACTED] at [REDACTED], California from May 1985 to April 1986.

In an attempt to establish the performance of the requisite qualifying agricultural employment during the eligibility period, the applicant has submitted the following evidence:

- 1) A corresponding Form I-705 affidavit purportedly signed by [REDACTED]
- 2) An employment verification letter purportedly signed by [REDACTED]

On April 12, 1990, the applicant was informed of adverse evidence and of the director's intent to deny the application. Specifically, the applicant was informed that [REDACTED] had provided the Service with copies of all the Form I-705 affidavits he had issued and that the applicant's Form I-705 was not one that Mr. [REDACTED] had verified.

In response to the notice, the applicant stated that he was submitting an employment statement from Jesus Camacho to verify that he worked as claimed. The applicant submitted an employment verification letter signed by [REDACTED]. The validity of that letter has not been questioned.

The director determined that the applicant had not overcome the adverse evidence and denied the application on June 9, 1992.

On appeal, the applicant stated that he had established his burden of proof to eligibility. The applicant submitted two separate employment verification statements from [REDACTED] and [REDACTED]

The record does not contain any adverse information that would discredit the applicant's statements. The record reflects that [REDACTED] did perform work for [REDACTED] Ranch during the qualifying period. The record also contains an uncontested affidavit from [REDACTED] in which he attests that he contracted workers to work at various farms, but in order to save time in completing the forms, used [REDACTED] farm on most of the I-705's he completed for his workers. He further stated that though the locations may not have been accurate, the total man-days worked was correct. The information regarding Mr. [REDACTED] I-705's used by the director to deny the application is not contained in the record.

The documentation submitted by the applicant throughout the application process appears to be consistent and to corroborate the applicant's claim. Such documents, including affidavits submitted by individuals who are willing to testify in this matter, may be accorded substantial evidentiary weight. It is, therefore, concluded that the applicant performed the requisite qualifying agricultural employment during the twelve-month statutory period ending May 1, 1986.

There are no known grounds of ineligibility, and it appears the application should be approved.

ORDER: The appeal is sustained.