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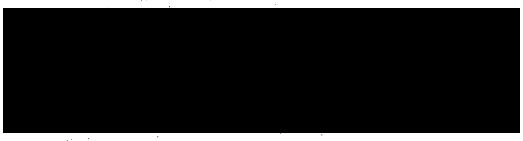

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: JAN 2 6 2005

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: 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

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 in part 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 at Tanita Farms.

The director also focused on the fact that the applicant had been arrested, and therefore may have been ineligible for temporary residence on that basis.

On appeal, the applicant provides documents that resolve the criminal matter. He asserts that he did work for the time required for Mr at Tanita Farms. He also requests that humanitarian factors be considered in the adjudication of his appeal.

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 129 man-days of qualifying agricultural employment for at Tanita Farms from October 12, 1985 to April 24, 1986. In support of this claim, the applicant submitted a corresponding Form I-705 affidavit along with a separate employment letter, both signed by who is represented as a farm labor contractor and foreman.

In attempting to verify the applicant's claimed employment, the Service acquired information which contradicted the applicant's claim. The director indicated that stated on November 10, 1988 that was dismissed from Tanita Farms between July 15 and July 30, 1985. On November 15, 1989, bookkeeper and custodian of payroll records for Tanita, Inc., stated that only employment with Tanita Farms during the qualifying period occurred from May 1, 1985 through July 15, 1985. It is noted that this period consists of only 76 man-days during the requisite qualifying period. In this case, the applicant claimed to have worked under Mr at Tanita Farms from October 1985 through April 1986 -- a period of time during which was not employed by Tanita Farms.

In addition, Ms. stated that Mr was never employed as a farm labor contractor by Tanita Farms, and he did not have access to company payroll records. Therefore, he would have been unable to verify the number of days a company employee worked.

On June 17, 1991, 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, but failed to do so. The director concluded the applicant had not overcome the derogatory evidence, and denied the application.

On appeal, the applicant states that he did indeed work for Mr. as claimed. He also states that he obtained the letter directly from Mr. at Tanita Farms, and that he had no clue that Mr. was no longer working for the company.

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.).*

Service investigation revealed that did not work at Tanita Farms after July 1985. This directly contradicts the applicant's claim of employment for Mr at Tanita Farms from October 1985 to April 1986. The applicant has not provided any documentation that even addresses, much less overcomes, this derogatory evidence. Therefore, the documentary evidence initially submitted by the applicant cannot be considered as having any probative value or evidentiary weight.

The applicant has failed to establish the performance of at least 90 man-days of qualifying agricultural employment during the twelve-month statutory period ending May 1, 1986. There is no waiver available, even for humanitarian reasons, of these statutory requirements. 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.