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U.S. Citizenship
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Services

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FILE:



Office: VERMONT SERVICE CENTER

Date: **JUL 08 2005**

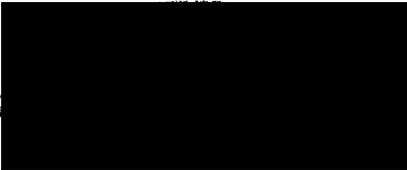
IN RE:

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:



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: This matter is an application for temporary resident status as a special agricultural worker denied by the Director, Eastern Regional Processing Facility, reopened and denied again by the Director, Eastern Service Center. The matter is before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The facility director denied the application because the applicant failed to establish that she performed at least 90 man-days of qualifying agricultural employment during the eligibility period. This decision was based on information provided by [REDACTED] for whom the applicant claimed to have worked. The center director denied the application because the applicant's claimed employment for [REDACTED] and because the applicant submitted a substantially revised claim of employment for [REDACTED].

On appeal from the facility director's decision, the applicant submitted additional evidence.

On appeal from the center director's decision, the applicant reaffirmed her claimed employment for [REDACTED] and submitted additional documents.

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 application, Form I-700, the applicant claimed 110 man-days cultivating and harvesting grapes for farm labor contractor [REDACTED] from October 1985 to March 1986. In support of the application, the applicant submitted a Form I-705 affidavit claiming employment for [REDACTED] at D.R. Farm Services, an additional employment statement, and a payroll statement, all purportedly signed by [REDACTED], personnel clerk. It is noted that the applicant's documentation specified that the applicant was paid in cash.

Subsequently, in the course of attempting to verify the applicant's claimed employment, the Service acquired information which directly contradicts the applicant's claim. Specifically, on June 13, 1988, the Service contacted the applicant's purported employer, [REDACTED], who specified that she did not start her farm labor contractor business, D.R. Farm Services, until June 1986, and therefore there should be no documents indicating [REDACTED] as the employer prior to that date. [REDACTED] further specified that she has always paid her employees by check, never in cash.

[REDACTED] also specified that she has no knowledge of [REDACTED] who has signed the applicant's documentation on behalf of her purported employer.

The facility director concluded that the applicant had failed to overcome the adverse evidence, and denied the application. On appeal from the facility director's decision, the applicant submitted a second Form I-705 affidavit and a separate employment letter, both signed by [REDACTED] who indicated that the applicant worked 92 man-days harvesting grapes from August 1985 to March 1986.

Subsequently, it was determined that the applicant had not been apprised of the proper adverse evidence prior to the denial of the application and the application was reopened. On December 22, 1993, the applicant was informed of the adverse evidence in possession of the Service. The applicant was granted 30 days to respond. In response, the applicant reaffirmed her claimed employment in agriculture.

On June 8, 1995, the center director determined that the applicant had not overcome the adverse evidence and denied the application. On appeal from the center director's decision, the applicant reaffirmed her claimed employment for [REDACTED] and submitted tax documents for several years subsequent to the qualifying period.

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.)*.

An applicant raises questions of credibility when asserting an entirely new claim to eligibility on appeal. In such instances, the Service may require credible evidence to support the new claim as well as a complete plausible explanation concerning the applicant's failure to advance this claim initially. 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.

The applicant's claim to have been employed by [REDACTED] was first brought to the Service's attention at the appellate level. The applicant offers no account as to why this entirely new claim to eligibility was not advanced on the application or at the interview. The very purpose of the Form I-700 application is to allow the applicant to claim the qualifying agricultural employment which entitles him to the benefits of status as a special agricultural worker.

Larger issues of credibility arise when an applicant claims employment which is called into question through Service investigation, and later attempts to establish eligibility with a different employer, heretofore never mentioned to the Service. The applicant's advancement of a new employment claim does not address, resolve, or diminish the credibility issues raised by the adverse evidence regarding the applicant's initial claim. For this reason, the applicant's new claim of employment for [REDACTED] will not serve to fulfill the qualification requirements necessary for status as a special agricultural worker.

[REDACTED] the applicant's alleged employer, specified that she did not start her farm labor contracting business until June 1986 and never paid her employees in cash. This adverse evidence directly contradicts the applicant's claim to have performed qualifying agricultural services for [REDACTED] prior to June 1986. The applicant's failure to rebut this adverse evidence severely diminishes the credibility of his claim and documentation. As such, the documentary evidence submitted by the applicant cannot be considered as having any probative value or evidentiary weight.

The applicant has failed to credibly establish the performance of at least 90 man-days of qualifying agricultural employment during the twelve-month statutory period ending May 1, 1986. 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.