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U.S. Citizenship
and Immigration
Services



24

JUN 10 2005

FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date:

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. 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 (SAW) was denied by the Director, Western Service Center. A subsequent appeal was remanded by the Acting Director, Legalization Appeals Unit. The application was reopened and denied again by the Director, California Service Center. The matter is before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

In both decisions of denial, 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]. Further, in the second denial the director addressed the submission by the applicant of an entirely new claim of employment [REDACTED].

Although the applicant did not respond to the more recent decision of denial, her appeal taken from the previous decision of denial is still in effect. In that appeal, the applicant reiterated her claim of employment for [REDACTED]. The applicant's employment claim and the evidence are addressed below.

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 to have worked 134 man-days harvesting tomatoes from May 12, 1985 to September 24, 1985 for [REDACTED].

In support of her claim, the applicant submitted a corresponding Form I-705 affidavit and a separate employment letter, bearing the signature of [REDACTED].

On June 26, 1991, in a Notice of Intent to Deny, the Director, Western Service Center, noted that the Immigration and Naturalization Service (INS), now Citizenship and Immigration Services (CIS) possessed evidence adverse to the applicant's employment claim. Specifically, in the course of attempting to verify the applicant's claimed employment, the CIS acquired information which contradicted the applicant's claim. Farm labor contractor [REDACTED] was in fact employed by [REDACTED] during the qualifying period. However, in an undated letter, [REDACTED] instructed CIS to "consider any and all applications with my signature as bogus," and stated with regard to applicants submitting such documents that "they bought these letters from someone else and not me." It is noted that, in another letter, dated January 13, 1989, [REDACTED] informed the CIS that "we have never harvested tomatoes in May" as claimed by the applicant. The applicant was accorded 30 days to respond to that evidence.

In response, the applicant submitted a letter purportedly signed by [REDACTED] attesting to the applicant's employment for farm labor contractor [REDACTED].

The Director, Western Service Center, found that the applicant had not overcome the adverse evidence and denied the application on September 23, 1991. On appeal, the applicant stated that she was sending a second letter from [REDACTED] reaffirming her claimed employment. The applicant submitted a letter signed by [REDACTED] who asserted that he had signed the applicant's previous documentation and that he was submitting exemplars of the different ways he signed his signature. The affiant submitted three separate signatures.

On July 25, 1996, Legalization Appeals Unit (LAU), now the AAO remanded the case for the inclusion of a copy of the notice of denial into the record or the issuance of a new decision of denial.

In a letter requesting that her application be reopened, dated May 22, 2002, the applicant stated that [REDACTED] had represented himself to her as a farm labor contractor and provided her with signed employment verification documents. She stated that she since had learned that he did not become a farm labor contractor until June 1986 and was, in fact, only a foreman for [REDACTED]. The applicant stated that she was defrauded because he had no authority to sign employment letters. The applicant stated that she was forced to seek out other employers for whom she worked to acquire additional evidence to corroborate her agricultural employment during the qualifying period. The applicant submitted an employment verification letter signed [REDACTED] who stated that the applicant worked for [REDACTED] from September 20, 1985 to January 20, 1986 for a period of 103 man-days thinning cotton and pruning grapes.

On September 20, 2004, the Director, California Service Center, denied the application. The applicant has not responded to that notice of denial.

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).

No specific type of documentation is required to sustain the applicant's burden of proof. However, the documentation must be credible. Documents which appear to have been forged, or otherwise deceitfully created or obtained, are not credible. United Farm Workers (AFL-CIO) v. INS, Civil No. S-87-1064-JFM (E.D. Cal.).

Gilberto Rios stated that all employment documents bearing his purported signature are of fraudulent origin. The applicant basically acknowledges this fact in her letter requesting a reopening of her case.

Further, an applicant raises additional 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. Although the applicant claims that she did not submit her employment with cotton because it was a non-qualifying crop, it cannot be concluded that the applicant had any advance knowledge of what was a qualifying crop and what was not at the time she submitted her SAW application. Thus, the applicant's statements are not persuasive.

The applicant's claim to having been employed by [REDACTED] was first brought to the Service's attention subsequent to her filing her Form I-694 Notice of Appeal of Decision. The applicant offers no credible 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. Therefore, the applicant's overall credibility remains in question. For this reason, the applicant's new claim of employment for

██████████ will not serve to fulfill the qualification requirements necessary for status as a special agricultural worker.

The applicant has failed to establish the performance of at least 90 man-days of qualifying agricultural employment during the twelve-month 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.