

identifying data deleted to
prevent identity theft and
invasion of personal privacy

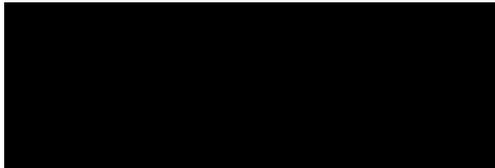
PUBLIC COPY

U.S. Department of Homeland Security
20 Mass. Rm. A3042, 425 I Street, N.W.
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

L4



FILE:



Office: CALIFORNIA SERVICE CENTER

Date: JUN 21 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 (SAW) was denied by the District Director, San Francisco, California, reopened and denied again by Director, Western Service Center. The matter is before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

In both decisions of denial, the directors 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]

Although the applicant did not respond to the more recent decision of denial, his appeal taken from the previous decision of denial is still in effect. In that appeal, the applicant proffered a new claim of employment for [REDACTED]. The applicant submitted additional employment documentation.

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 102 man-days employment harvesting grapes for [REDACTED] from September 1985 to December 1985.

In support of the claim, the applicant submitted a form employment verification letter, which was purportedly signed by [REDACTED]

The district director determined that the applicant's claimed employment was incredible and denied the application on October 27, 1988.

On appeal, the applicant stated that he was submitting evidence from a new employer for whom he worked during the qualifying period. The applicant submitted Form I-705 affidavit and a separate form employment letter, both signed by [REDACTED]. The Form I-705 affidavit indicated that the applicant worked 100 man-days cultivating grapes for [REDACTED] at Tex-Cal Farms in Kern, California from January 2, 1986 to April 30, 1986.

On July 20, 1990 the application was reopened and on that date, in a Notice of Intent to Deny, the Director, Western Service Center, informed the applicant of adverse evidence acquired by the Service regarding the applicant's purported employment for [REDACTED]. Specifically, the applicant was informed that [REDACTED] stated to a Service officer in a telephone conversation that the applicant was never employed by him and that he never issued a work letter to the applicant. Mr. [REDACTED] stated that he went out of business in 1983.

The applicant was further informed that Service inquiries determined that the applicant had been charged on March 23, 1985 in case [REDACTED] Bakersfield, California, with violation of 12031A PC. "Carry loaded firearm in public place;" and, 3007 F&G Hunting without a license. The applicant was instructed to provide the Service with the disposition of those charges.

The applicant was accorded 30 days to respond to that notice, but did not respond. On April 22, 1992, the Director, Western Service Center, denied the application. No further information, argument or documentation has been received from the applicant, or from anyone acting on his behalf. During the ensuing 13 years, the applicant has not submitted any information, argument, or documentation to challenge the more recent decision 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.).

█ has disavowed the applicant's claimed employment. The applicant has provided no credible evidence or statement to overcome this derogatory evidence which directly contradicts his claim. Therefore, the documentary evidence submitted by the applicant regarding his claim of employment for █ cannot be considered as having any probative value or evidentiary weight. The applicant's credibility further deteriorated when, faced with evidence that his initial submission was fraudulent, he amended his claim to include employment at other.

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 █ 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. 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.