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FILE:

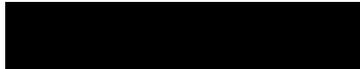


Office: CALIFORNIA SERVICE CENTER

Date: JUN 27 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 Director, Western Service Center, reopened and the application was 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]

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 reiterated his claim of employment for Ismael Canales. 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 application, Form I-700, the applicant claimed to have performed 102 man-days picking and packing grapes for Ismael Canales from July 6, 1985 through October 30, 1985.

In support of his claimed employment with [REDACTED] the applicant submitted a Form I-705 affidavit, and an employment verification letter, both signed by [REDACTED] who identified himself as being a produce dealer during his employment of the applicant. The affidavit reflects that the applicant had been employed by Mr. [REDACTED] for 102 man-days as a picker and packer of grapes at the Nalbandian Farm in Kern County, California, from July 6, 1985, through October 30, 1985. Both the affidavit and letter reference the applicant as having been paid in cash.

On November 21, 1991, in a Notice of Intent to Deny, the Director, Western Service Center, noted that the Service possessed evidence adverse to the applicant's employment claim. Specifically, the applicant was informed that [REDACTED] office clerk for Nalbandian Sales, Inc., had represented to the Service that 1985 and 1986 records for the company did not indicate that [REDACTED] was a cash buyer for the firm during the respective two year period. The applicant was further informed that [REDACTED] former office manager for Nalbandian, provided the Service with a list of all persons who were issued employment verifications by Nalbandian Sales/Nalbandian Farms; the applicant's name did not appear on this list. The applicant was accorded 30 days to respond. In response the applicant submitted a copy of an unsigned letter from [REDACTED] Produce intended to establish the employment history of the applicant, but that merely described Ismael [REDACTED] buying practices [REDACTED] indicated that he was licensed to conduct business on a cash basis only and he further stated that [REDACTED] should have been asked if he [REDACTED] transacted business with Nalbandian Sales during the qualifying period. As such, the letter is of little probative value to the applicant's claimed employment.

The Director, Western Service Center, found that the applicant had not overcome the adverse evidence and denied the application on January 22, 1992. On appeal, the applicant reaffirmed his claimed employment stating that he was paid in cash. The applicant stated that he was submitting additional evidence of his employment. The applicant submitted the original of the photocopied letter submitted in response to the Notice of Intent to Deny signed by [REDACTED]

Subsequently, the application was reopened and on March 8, 2001, in a Notice of Intent to Deny, the Director, California Service Center, noted that a check of Nalbandian Sales records had indicated that Ismeal Canales was not a cash buyer for during the qualifying period.

The applicant was accorded 30 days to respond to that notice, but did not respond. On March 11, 2002, the Acting Director, California 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 three 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.)*.

According to statements made by [REDACTED] office manager for Nalbandian Sales/Nalbandian Farms, the applicant did not work for the company during the eligibility period, and was never issued an employment verification by the company. Further, Ismael Canales was not a cash buyer for Nalbandian Sales during the qualifying period. The applicant has not overcome this adverse evidence which directly contradicts his claim. Therefore, 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.