U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

L4

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: [illegible]

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:

[redacted]

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 was denied by the Director, Western Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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. This decision was based on adverse information acquired by the Service relating to the applicant's claim of employment fo at nd

On appeal, the applicant submits a statement from counsel.

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 "102" man-days picking and pruning grapes for at during the qualifying period.

In support of his claim, the applicant submitted a corresponding I-705 affidavit and a separate employment affidavit, both signed by

In the course of attempting to verify the applicant's claimed employment, the Service acquired information which contradicted the applicant's claim. On March 27, 1991, payroll clerk for and informed a Service officer that, during the qualifying period worked as a foreman only from August 1985 to October 1985, for approximately 54 days. Mr. therefore could not have supervised anyone at that farm for 90 days or more.

On April 9, 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. The applicant was granted thirty days to respond.

In response to the Service's notice, the applicant submitted a second Form I-705 affidavit claiming a total of 110 man-days employment cultivating and harvesting grapes for in Fresno, California from May 1, 1985 to May 1, 1986.

The director determined that the applicant had failed to overcome the adverse evidence, and denied the application on August 12, 1991. On appeal, counsel asserts that the applicant worked 54 man-days fo and 110 man-days for Counsel references a Legalization Appeals Unit (LAU), now the AAO, decision where the LAU approved an application because no evidence of fraud was found.

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.).*

Counsel's referencing of a previous LAU decision in this case is not clear. In that case, the applicant's documentation was brought into question because of an apparent signature discrepancy regarding the applicant's

documentation. There were no questions regarding whether the applicant's employer was actually farming during the claimed period of employment. There are no questions regarding the signatures contained on this applicant's documentation. Rather, questions regarding the credibility of this applicant's documentation are raised because the applicant initially submitted a claim of 102 man-days employment for which he later claims on appeal to be only 54 man-days after being presented with the adverse evidence that could have worked no more than 54 days. Counsel has not addressed this fact.

Further, an applicant raises serious 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 payroll clerk of and indicated that was a foreman for only 54 days during the qualifying period and therefore could not have supervised any employees for over 90 days. The applicant has not overcome this derogatory evidence which directly contradicts the applicant's 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 establish credibly 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.

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