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U.S. Citizenship
and Immigration
Services

24

FILE:

Office: CALIFORNIA SERVICE CENTER

Date: **FEB 27 2006**

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: The application for temporary resident status as a special agricultural worker was denied by the Director, Western Service Center, remanded by the Administrative Appeals Office (AAO), and denied again by the Director, California Service Center. The matter was again remanded by the AAO and denied again by the Director, California Service Center. The matter is now before the AAO on appeal. The appeal will be dismissed.

The director initially denied the application because the applicant failed to appear and file a completed application. In his second and third decision, the director denied the application because the director concluded the documentation submitted did not satisfy the applicant's burden of proof of having performed qualifying agricultural employment. This decision was based on adverse information acquired by the Service relating to the applicant's claim of employment [REDACTED]

On appeal from the initial denial, the applicant stated that he had filed a complete application. The record does not contain a response to the final notice.

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 106 man-days of qualifying agricultural employment for [REDACTED] from May 17, 1985 to October 21, 1985.

In support of the claim, the applicant submitted a Form I-705 affidavit, and a separate employment letter, both purportedly signed by [REDACTED]. The applicant also submitted a photocopied 1985 Form W-2 Wage and Tax Statement purportedly from Mariani Orchards to the applicant.

On May 21, 1991, the application was denied because the applicant failed to appear and file a completed application. Subsequently, the matter was remanded by the Administrative Appeals Office on August 7, 1996 as it was determined that the applicant had complied with regulatory requirements.

In attempting to verify the applicant's claimed employment, the Immigration and Naturalization Service, or the Service (now, Citizenship and Immigration Services, or CIS) acquired information which contradicted the applicant's claim. Specifically, the Service acquired a letter dated September 16, 1988, from [REDACTED] stating in part that, "We have provided 25 employment verifications to employees and former employees in both the general and SAW amnesty programs." Attached to the letter was a list of the 25 employees that [REDACTED] asserted had been provided employment verification documents. The applicant's name was not on that list.

The director concluded the applicant had not overcome the aforementioned derogatory evidence, and denied the application on February 20, 1998. Counsel responded in a letter stating that the applicant had not been apprised of any adverse evidence prior to the denial of the application and on October 17, 2001, the decision was withdrawn and the case was remanded by the AAO in order for the Service to inform the applicant of the adverse evidence.

On October 11, 2004, 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. The record contains no response from the applicant to the Service's notice.

On January 24, 2005, the director denied the application. The record contains no response to that decision.

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.)*.

The applicant's name does not appear on the list of employees [REDACTED] provided with employment verification documents. The applicant has not addressed nor overcome this adverse evidence, which diminishes the credibility of his claimed employment. The applicant has, therefore, 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.