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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:

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 was denied by the Director, Northern Regional Processing Facility, remanded by the Legalization Appeals Unit (LAU), now the Administrative Appeals Office (AAO), and denied again by the Director, Western Service Center. The matter is now before the AAO on appeal. The appeal will be dismissed.

The directors denied the application because the applicant failed to establish that he performed 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 for [REDACTED]

On appeal from the initial denial, the applicant reaffirmed his claim to have performed qualifying agricultural employment under the supervision of [REDACTED]. In response to the final denial, the applicant claimed other employment.

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, provided he is otherwise admissible under section 210(c) of the Act and is 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 the following employment for labor contractor [REDACTED]

- (1) 80 man-days weeding sugar beets for [REDACTED] California, from September 1985 to December 1985; and
- (2) 39 man-days cutting asparagus for [REDACTED] Imperial, California, from January 1986 to March 1986.

In support of the claim, the applicant submitted a Form I-705 affidavit purportedly signed by [REDACTED]

In the course of attempting to verify the applicant's claimed employment, the Service acquired information which contradicted the applicant's claim. On July 20, 1988, [REDACTED] the applicant's purported supervisor, executed a sworn statement in which he admitted that he never worked for [REDACTED]

Subsequent to the remand of the application, on February 12, 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. The applicant reaffirmed his claimed employment [REDACTED] stating that [REDACTED] must have been under extreme pressure to deny his employment. The applicant submitted three separate form affidavits, virtually identical in content, from [REDACTED] of whom state that they worked together with the applicant [REDACTED] & [REDACTED] illegally for more than 90 man-days during the qualifying period. As stated above, [REDACTED] stated that he did not work for [REDACTED]. Nothing has been submitted [REDACTED] that contradicts that information. As such, the affidavits are of little probative value to the applicant's claimed eligibility and do not overcome the adverse evidence in this matter. The director concluded the applicant had not overcome the adverse information, and denied the application on

February 14, 1992. In response, the applicant submitted a letter in which he stated that he worked for [REDACTED] under the name [REDACTED]. The applicant submitted an employment letter signed by [REDACTED] stating that the applicant worked for him from January 1985 to March 1985. It must be noted that such employment is outside the qualifying period of May 1, 1985 to May 1, 1986 and is therefore, non-qualifying.

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)*, Civil No. S-87-1064-JFM (E.D. Cal.).

The fact that [REDACTED] the applicant's purported employer, admitted he did not work [REDACTED] directly contradicts the applicant's claim. The applicant has not overcome this adverse evidence. As such, 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 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.