

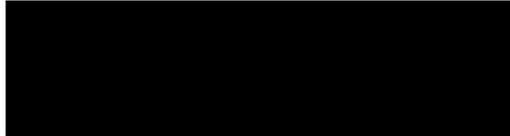
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U.S. Citizenship  
and Immigration  
Services

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FILE:



XAH 88 534 07008

Office: CALIFORNIA SERVICE CENTER

Date: APR 04 2007

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. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The applicant's temporary resident status as a special agricultural worker was terminated by the Director, Western Service Center and remanded by the Administrative Appeals Office (AAO). The Director, California Service Center, reopened, and improperly denied the application and the AAO remanded case. The Director, California Service Center, reopened, and terminated the applicant's temporary resident status. The matter is now before the AAO on appeal. The appeal will be dismissed.

The director terminated the temporary resident status of the applicant upon finding that the adjustment to temporary resident status was the result of fraud or willful misrepresentation as set forth in section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(6)(C)(i), formerly section 212(a)(19) of the Act. This determination was based on adverse evidence regarding the applicant's claimed employment for [REDACTED]

On appeal, from the initial termination notice, the applicant reasserted the veracity of his employment claim for Roy Perez. The applicant asserted that he had no further evidence to submit to establish his employment claim.

According to 8 C.F.R. § 210.3(a), an alien applying for special agricultural worker status 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, 8 U.S.C. 1160(c), and is not ineligible under 8 C.F.R. 210.3(d).

On the application, Form I-700, the applicant claimed to have performed 102 man-days harvesting grapes for [REDACTED] in Kern County, California from May 1985 to August 1985. In support of the claim, the applicant submitted a Form I-705 affidavit and a separate employment statement purportedly signed by [REDACTED]

Section 210(a)(3)(B)(i) of the Act, 8 U.S.C. 1160(a)(3)(B)(i), provides for the termination of status of a special agricultural worker if the Attorney General finds by the preponderance of the evidence that the adjustment to temporary resident status was the result of fraud or willful misrepresentation as set out in section 212(a)(6)(C)(i) of the Act, 8 U.S.C. 1182(a)(6)(C)(i).

In this case, the applicant was granted temporary resident status on July 19, 1989. Subsequent to that decision, however, adverse information was obtained which led to a conclusion that the applicant had not been eligible for temporary resident status.

Specifically, on January 4, 1989, in United States District Court, Southern District of California, [REDACTED] pled guilty to one count of violating 18 U.S.C. §§ 1001 and 2, aiding and abetting false statements and writings used in support of applications filed for special agricultural worker status. Case Number [REDACTED]-Criminal.

Audon [REDACTED] was informed that the Service received more than 2,200 Special Agricultural Worker applications from individuals who allege to have worked for [REDACTED] in Kern County, California. On April 10, 1990, [REDACTED] provided a voluntary sworn statement "to assist this agency in clearing up problems that I and persons signing my name to these employment affidavits have created." In his statement, [REDACTED] stated that the only work he performed in the years 1985 and 1986 relating to grapes was to rent tractors to harvesting crews and to periodically check these tractors for needed repairs. [REDACTED] further stated that the only agricultural workers that he employed in the years 1985 and 1986 was a crew of 35 individuals that he hired from the local Bakersfield, California area. [REDACTED] employed these workers to harvest cotton, and he did not sign any employment verification letters or I-705 affidavits for any of his cotton harvesting crew, as they were all legal residents of the United States.

██████████ specified that each and every employment verification letter and Form I-705 that indicates ██████████ as the affiant is false, fictitious, and fraudulent. ██████████ also advised the Service that he was aware of other individuals who signed verification letters using the name ██████████ or ██████████ and that these signed documents represent a forgery of his name and should also be considered false, fictitious, and fraudulent.

Termination proceedings must have commenced before the date (December 1, 1990) on which the alien became eligible for adjustment to lawful permanent resident status. 8 C.F.R. § 210.4(d)(3)(ii)

The applicant was notified by a letter dated August 8, 1990, of the director's intent to terminate his temporary resident status. He was allowed thirty days to respond. The director determined that the applicant had failed to respond to the notice and issued a notice dated May 21, 1991, terminating the applicant's temporary resident status.

The applicant, however, did submit a response prior to the issuance of the director's notice. The applicant submitted a photocopy of the employment document previously provided along with several pay statements, which listed ██████████ as the contractor. The applicant also submitted affidavits from three affiants who attested to the applicant's residence in the Bakersfield, California during the qualifying period and indicated that "he [the applicant] worked with me on the same ranch."

The record contains a Notice of Intent to Deny dated March 23, 1992, which informed the applicant of the adverse evidence regarding his employment for ██████████. The director denied the application on May 13, 1992. On May 19, 1992, the applicant put forth a new employment claim for ██████████ during the qualifying period. The applicant submitted a Form I-705 affidavit indicating that he worked 96 man-days laboring in squash and strawberries at Alamo Farms in Santa Barbara County, California from January 1, 1986 to April 30, 1986. The applicant asserted that he did not initially claim this employment on his Form I-700 application because "I was told that one employer was enough." The applicant asserted that he was unable to locate ██████████.

On January 29, 2001, the AAO concluded that the director had failed to consider the documentation submitted in response to the Notice of Intent to Terminate and remanded the case instructing the director to address said documentation in a new decision.

On September 11, 2004, a notice was sent to the applicant at his address of record, advising him to appear at the Citizenship and Immigration Services (CIS) office in Gardena, California on September 25, 2004, to be fingerprinted. The notice, however, was returned by the post office as unclaimed. The envelope indicates that the post office provided the applicant at least two opportunities to acquire the notice before it was returned to the California Service Center.

On February 11, 2005,<sup>1</sup> the director reopened the proceedings and issued a Notice of Intent to Deny, which again advised the applicant of the adverse evidence regarding his employment claim for ██████████. The director also advised the applicant of the affidavits submitted by the three affiants, his revised employment claim with ██████████ and his failure to appear on September 25, 2004 to be fingerprinted. The notice was returned by the post office as undeliverable and on March 23, 2005, the director denied the application.

On June 29, 2006, the AAO remanded the case as the director had issued an incorrect decision as the applicant had been granted temporary resident status, and there was no application pending that the director could deny.

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<sup>1</sup> The director inadvertently dated the Notice of Intent to Deny February 1, 2004.

The director was advised that he may continue with the original termination of the temporary resident status of the applicant only if he finds that the adjustment to temporary resident status was the result of fraud or willful misrepresentation as set forth in section 212(a)(6)(C)(i) of the Act.

On August 31, 2006, the director issued a Notice of Intent to Terminate, which advised the applicant of the director's intent to terminate his temporary resident status. The applicant was advised of the adverse evidence regarding his employment claim for [REDACTED] along with the affidavits submitted by the three affiants, his revised employment claim with [REDACTED] and his failure to appear on September 25, 2004 to be fingerprinted. Regarding his employment claim for [REDACTED], the director determined that [REDACTED] sworn statement severely undermined the applicant's credibility. Regarding the affidavits, the director noted that they "reflect that the name has been altered using white out and changing the name from [REDACTED] to [REDACTED]". Regarding the revised claim with [REDACTED] the director determined that said claim would not serve to credibly establish he had worked at least 90 man-days of qualifying agricultural employment during the qualifying period as he did not list the employment on his application or advance it at the time of his interview. The director also determined that the applicant was found inadmissible under section 212(a)(6)(C) of the Act for fraud or willful misrepresentation regarding his employment claim with [REDACTED]. The applicant was advised that this ground of inadmissibility may be waived and that he could file an Form I-690, Application for Waiver of Grounds of Excludability.

The applicant was given 30 days in which to respond. The notice, which was sent to the applicant's address of record, was returned by the post office as undeliverable. To date, no new address has been presented by the applicant. On November 20, 2006, the director terminated the applicant's temporary resident status, having determined that the applicant had failed to submit sufficient evidence to overcome the grounds of ineligibility.

The record clearly establishes the applicant fraudulently put forth his claim of eligibility for group 2 status as a special agricultural worker. The applicant was ineligible for temporary resident status and acquired such status by fraud. Therefore, the decision to terminate such status is affirmed.

**ORDER:** The appeal is dismissed. This decision constitutes a final notice of ineligibility.