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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: TEXAS SERVICE CENTER

Date: DEC 05 2007

XLT 89 026 1022

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. All documents have been returned to the office that originally decided 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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The director initially denied the application on May 24, 1991, because the applicant failed to appear for two scheduled interviews.

The director subsequently denied the application again on May 25, 2007, because the applicant failed to establish the performance of at least 90 man-days of qualifying agricultural employment during the eligibility period.

On appeal, the applicant asserts that the Citizenship and Immigration Services officer who conducted his interview misunderstood his testimony during the interview. He asserts that the evidence he submitted in support of his claim of qualifying agricultural employment during the eligibility period was not given proper weight.

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 performed 312 man-days of qualifying agricultural employment picking cabbage and peppers for Addison Tart Produce Company, located in Dunn, North Carolina. The applicant did not submit any evidence to corroborate his claim of qualifying agricultural employment for that company during the requisite period.

The director initially denied the application on May 24, 1991, because the applicant failed to appear for two interviews as scheduled.

The applicant filed an appeal from the denial decision on September 13, 1993. On appeal, the applicant requested a copy of the record of proceeding. A copy of the record of proceeding was mailed to the applicant on November 9, 1993.

On November 18, 1993, the director reopened the case *sua sponte* and provided the applicant with another opportunity to be interviewed.

During his interview on November 17, 2003, the applicant stated in a sworn statement in the Spanish language:

Estuve en los Estados Unidos como mojado el '74, '76, & '78. En el año 1978 me regresé a Mexico y no volví a Estados Unidos hasta en el año 1986 como en Marzo.

1986 yo permanecí en Mexico. Durango, Mexico. En los años de 76 & 77 trabajé en Sur Carolina. En el 1978 trabajé en Florida y eso es cuando salí para Mexico. Aparte de los años de 1976, 1977 & 1978 yo no trabajé en Estados Unidos. Yo me dediqué a sembrar en México.

Translation:

I was in the United States as a youth in '74, '76, & '78. In 1978 I returned to Mexico, and I didn't return to the United States until March of 1986.

From August 1978 to March 1986 I stayed in Mexico. During that time I was working in Santa Clara, Durango, Mexico. During the years 1976 and 1977 I worked in South Carolina, in 1978 I worked in Florida, and that is when I left for Mexico. Aside from the years 1976, 1977 and 1978, I did not work in the United States. I dedicated myself to farming in Mexico.

The applicant's testimony in this sworn statement contradicts his statement on the Form I-700 that he worked for Addison Tart Produce Company for 312 days picking cabbage and peppers during the period from May 1985 to May 1986. The applicant has not provided any explanation for this discrepancy.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, it is incumbent on the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

Furthermore, if the applicant re-entered the United States in March 1986 as he stated during his November 2003 interview, he could not possibly have completed 90 man-days of qualifying agricultural employment from March 1986 to May 1, 1986.

On February 21, 2006, the applicant was interviewed again. During this interview the applicant's November 17, 2003 sworn testimony was read to him in Spanish and he agreed with the information he provided during the 2003 interview. Later during the 2006 interview, when the applicant referred to a copy of his Form I-700 he brought with him to the interview, he changed his testimony. He claimed that he performed qualifying agricultural employment in North Carolina during the period from May 1, 1985 to May 1, 1986. However, he provided no evidence to corroborate his claim.

On July 21, 2006, the applicant was requested to submit a Form I-705 employment affidavit or other evidence such as affidavits from co-workers to corroborate his claim of at least 90 man-days of qualifying agricultural employment during the requisite period. The applicant, in

response, submitted a Form I-705 affidavit relating to his purported employment for Addison Tart Produce Company in Dunn, North Carolina, during the requisite period. However, this affidavit has been signed only the applicant. No representative of Addison Tart Produce Company signed the affidavit. Therefore, this affidavit is not sufficient to corroborate the applicant's claim.

The applicant also provided affidavits dated August 10, 2006, from [REDACTED] [REDACTED] stated that he worked with the applicant in Dunn, North Carolina, and Florida during the period from 1985 to 1986. [REDACTED] stated that they worked with the applicant in North Carolina, and Florida during the period from May 1, 1985 to May 1, 1986. However, none of these affiants provided any testimony regarding the number of man-days the applicant worked for Addison Tart Produce Company during the requisite period. Furthermore, none of the affidavits provided the name of their employer in Florida, the type of work they performed for that employer, or the number of man-days the applicant worked in Florida. Therefore, these affidavits are not sufficient to corroborate the applicant's claim.

The director denied the application again on May 25, 2007, because the applicant failed to establish at least 90 man-days of qualifying agricultural employment during the period from May 1, 1985 to May 1, 1986. The director specifically noted in the denial decision the contradictions in the applicant's testimony on the Form I-700 and during his interviews in 2003 and 2006 regarding his claimed dates of employment in the United States during the requisite period. The director noted in the denial decision that the applicant attested during his February 21, 2006 interview that he was in Canada performing agricultural work during the period from May 1, 1985 to May 1, 1986.

On appeal, the applicant asserts that there was a "clear misunderstanding" of his testimony during his interview. The applicant further asserts that the evidence he submitted in support of his claim was given the proper weight.

The applicant appears to be referring to the director's statement in the denial decision that the applicant testified that he was working in Canada during the requisite period. The director appears to have misread the interviewing officer's notes from the February 21, 2006, interview. The applicant did not attest that he was performing agricultural work in Canada during the requisite period. Rather, he advanced a revised claim that he was working in "Carolina" during the requisite period. Therefore, the director's statement is hereby withdrawn.

However, the fact remains that the applicant has not submitted any evidence from Addison Tart Produce to corroborate his claim of at least 90 man-days of qualifying agricultural employment for that company during the requisite period. Furthermore, the affidavits from [REDACTED] lack sufficient detail to corroborate the applicant's claim.

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 has made contradictory statements regarding his claim of qualifying agricultural employment during the requisite period and has submitted affidavits from purported co-workers that lack sufficient detail to corroborate his claim. 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.