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U.S. Citizenship
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FILE:

XVN 88 270 1060

Office: CALIFORNIA SERVICE CENTER

Date:

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. 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, Chief
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 regarding the applicant's claim of employment for foreman [REDACTED]

On appeal, the applicant reiterates his claim that he performed at least 90 man-days qualifying agricultural employment during the requisite period.

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 111 man-days cutting asparagus for [REDACTED] in Imperial, California, during the period from October 1985 to January 1986.

In support of the claim, the applicant submitted a Form I-705 affidavit and a separate affidavit from [REDACTED] for [REDACTED], located in Blythe, California. [REDACTED] indicated that the applicant worked for him cutting asparagus at various farms in Imperial, California, during the period from October 10, 1985 to January 28, 1986.

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 that contradicted the applicant's claim. Specifically, [REDACTED] Secretary/Treasurer for [REDACTED], informed the Service that [REDACTED] was employed by [REDACTED], from January 7, 1986 to March 1, 1986 for approximately fifth-three (53) days. Since [REDACTED] was only employed by [REDACTED], for 53 days during the requisite period, he cannot attest that the applicant worked for [REDACTED] for 110 man-days during the requisite period.

On July 20, 1992, 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, the applicant advanced a revised claim that he also worked for [REDACTED] a foreman at Ranch Cucamonga located in Fontana, California. The applicant submitted an affidavit dated September 6, 1988, from [REDACTED] stating that the applicant worked for him "on a part time basis at some ranches in the San Bernardino County from 5/85 to

9/85, for a total of 95 man-days harvesting grapes for wine. [REDACTED] further stated that the applicant was paid in cash.

The director denied the application because the applicant had not overcome the derogatory evidence regarding his claim of qualifying agricultural employment for [REDACTED]. The director further noted that the applicant's substantially revised claim of 95 man-days of employment for foreman [REDACTED] at Rancho Cucamonga raised questions of credibility regarding his claim.

On appeal, the applicant reiterates his claim that he performed at least 90 man-days of qualifying agricultural employment during the requisite period. He states that he listed only one employer on the Form I-700 because he was unable to locate [REDACTED] in order to obtain employment document at the time he filed his Form I-700 application.

The applicant has failed, first in response to the request for additional evidence and again on appeal, to submit any evidence to overcome the adverse information regarding his claim of 110 man-days of qualifying agricultural employment for [REDACTED] during the requisite period.

It is noted that the applicant's claim to have performed qualifying agricultural work for [REDACTED] at Rancho Cucamonga was introduced into these proceedings only *after* damaging information had been obtained regarding the applicant's original claim of having worked solely for [REDACTED]. An applicant raises questions of credibility when asserting a substantially revised claim to eligibility for a benefit that can only be granted by virtue of the revised claim. In such instances, Citizenship and Immigration Services may require credible evidence to support the substantially revised claim as well as a complete explanation concerning the applicant's failure to advance this claim initially. The very purpose of the Form I-700 application is to allow the applicant to claim the qualifying agricultural employment that entitles him to the benefits of status as a special agricultural worker.

Larger issues of credibility arise when an applicant claims employment that is called into question through a Service investigation, and later attempts to establish eligibility by amending his employment claim in response to the Notice of Intent to Deny. The applicant's advancement of a new employment claim does not address, resolve, or diminish the credibility issues raised by the adverse evidence as regards the applicant's initial claim. Therefore, the applicant's overall credibility remains in question. For this reason, the applicant's new claim of employment at [REDACTED] at Rancho Cucamonga will not serve to fulfill the qualification requirements necessary for status as a special agricultural worker.

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.).

██████████ Secretary/Treasurer for ██████████, informed the Service that ██████████ was employed by ██████████ from January 7, 1986 to March 1, 1986, for approximately 53 days. Since ██████████ was only employed by ██████████ for a total of 53 man-days during the qualifying period, he cannot attest that the applicant worked for ██████████, under his supervision for 110 man-days during the requisite period. The applicant has failed to overcome this adverse evidence, which directly contradicts his initial employment claim. Therefore, the documentary evidence submitted by the applicant cannot be considered as having any probative value or evidentiary weight.

Furthermore, the applicant's substantially revised claim of 95 man-days of qualifying agricultural employment for foreman ██████████ at Rancho Cucamonga raises serious questions of credibility regarding 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.