

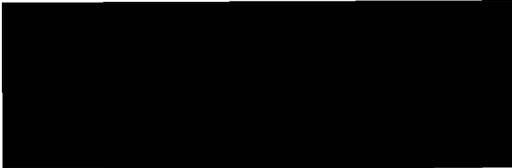
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U.S. Citizenship
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Services

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FILE: [REDACTED]
XEM-89-083-4190

Office: CALIFORNIA SERVICE CENTER

Date: OCT 11 2006

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:



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.

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 by the Director, Western Service Center, then remanded by the Administrative Appeals Office (AAO). The matter was denied again by the Director, California Service Center and is now before the Administrative Appeals Office on appeal. The appeal will be sustained.

On the application, Form I-700, the applicant claimed to have performed 102 man-days of employment picking and packing grapes for [REDACTED] from July 6, 1985 through October 30, 1985.

In support of his claimed employment with [REDACTED] the applicant submitted a Form I-705 affidavit, and an employment verification letter, both signed by [REDACTED] who identified himself as being a produce dealer during his employment of the applicant. The affidavit reflects that the applicant had been employed by Mr. [REDACTED] for 102 man-days as a picker and packer of grapes at the [REDACTED] in Kern County, California, from July 6, 1985, through October 30, 1985. Both the affidavit and letter reference the applicant having been paid in cash.

The director determined that the documentation submitted by the applicant did not credibly establish the applicant's claimed employment. This conclusion was based on adverse information obtained from Service attempts to verify the applicant's claimed employment. In particular, the director noted within the Notice of Intent to Deny that [REDACTED] office clerk for [REDACTED], stated that [REDACTED] name was not found within the company's 1985 and 1986 employment records. Also, the director asserted that [REDACTED] former office manager for [REDACTED] provided the Service with a list of all persons who were issued employment verifications, and that the applicant's name did not appear on this listing. The director further noted that all employees of the company are paid by check, and not cash as the applicant's employment documents describe his compensation during his claimed employment.

The applicant was duly advised of derogatory evidence acquired by the Service prior to the issuance of the decision. However, the adverse information cited in the director's Notice of Intent to Deny was at variance with the adverse information contained within the record of proceedings. Specifically, the adverse information within the record reflects that [REDACTED] office clerk for [REDACTED], represented to the Service that 1985 and 1986 records for the company did not include an indication that [REDACTED] was a cash buyer from the firm during the respective two year period. As reflected above, the director had erroneously stated within the Notice of Intent to Deny that [REDACTED] had indicated that [REDACTED] had not appeared within the company's 1985 and 1986 employment records. In response to that Notice of Intent to Deny, the applicant submitted two separate letters from [REDACTED] stating that the applicant worked for [REDACTED] from May 1985 to May 1986. In the second letter [REDACTED] stated that he did not work for any farm as a foreman or farm labor contractor. He further stated that he was never employed by [REDACTED] and that the applicant's employment should have been reflected as employment for [REDACTED]

On December 13, 1991, the director denied the application. On appeal, the applicant submitted a statement indicating that she never worked for [REDACTED] but for [REDACTED] and that [REDACTED] bought the "fields of fruit" from [REDACTED]. The applicant stated that the people who completed her papers accidentally put down that she had worked for [REDACTED]

Subsequently, the case was remanded for further consideration, the remand stating that the applicant had not been properly apprised of the adverse evidence prior to the denial of the application.

On February 7, 2004, the Director, California Service Center, issued a motion to reopen the application fully apprising the applicant of the adverse evidence acquired by the Service. In response to the notice, the applicant's counsel submitted a letter stating that too much time had passed since the denial of the application and that the applicant was unable to contact anyone to acquire additional evidence to support her claimed employment.

On March 21, 2005, the Director, California Service Center denied the application. Again, the applicant's attorney indicated that the applicant did not have any additional evidence to proffer.

It has not been demonstrated that the applicant did not work for [REDACTED] harvesting fruit purchased from [REDACTED] as claimed the applicant's documentation. The director has failed to pursue the possibility that [REDACTED] purchased fields of crops from [REDACTED], based on the record.

The inference to be drawn from the documentation shall depend on the extent of the documentation, its credibility and amenability to verification. If an applicant establishes that he has in fact performed the requisite qualifying agricultural employment by producing sufficient evidence to show the extent of that employment as a matter of just and reasonable inference, the burden then shifts to the Service to disprove the applicant's evidence by showing that the inference drawn from the evidence is not reasonable. 8 C.F.R. § 210.3(b)(1).

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... if the Service has not obtained information which would refute the applicant's evidence, the applicant satisfies the requirements for the SAW program with respect to the work eligibility criteria. *United Farm Workers (AFL-CIO) v. INS, Civil No. S-87-1064-JFM (E.D. Cal.)*.

This record contains no sworn statement, admission, or other evidence that [REDACTED] did not purchase fields of fruit from [REDACTED] which would lead to a conclusion that the applicant did not work as claimed. The applicant has submitted sufficient evidence to establish as a matter of just and reasonable inference the performance of at least 90 man-days of qualifying agricultural employment during the twelve-month statutory period ending May 1, 1986.

ORDER: The appeal is sustained. The director shall complete the adjudication of the application.