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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: OCT 20 2005

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: 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, 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 fo at

On appeal, the applicant stated that he tried to locate but was unable to do so. The applicant stated that he was able to locate another employer for whom he worked during the qualifying period and that he was submitting evidence of that 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, 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 98 man-days of qualifying agricultural employment for n Merced, California from July 8, 1985 to October 16, 1985.

In support of the claim, the applicant submitted a corresponding Form I-705 affidavit and a separate employment letter, both signed by who identified himself as the applicant's foreman at

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 which contradicted the applicant's claim. Specifically, owner/president of informed the Service tha was not and never had been an employee of

On December 20, 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. In response to the notice, the applicant stated that he needed more time to find

The director concluded the applicant had not overcome the derogatory evidence, and denied the application on January 31, 1992. On appeal, the applicant submitted a second Form I-705 affidavit and an additional employment letter, both signed by indicated that the applicant worked at for 124 man-days from November 5, 1985 to April 25, 1986.

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 owner of stated that never worked for his company. Therefore, he could not attest to the applicant having worked there. The applicant has not addressed and has failed to overcome this adverse evidence, which directly contradicts his employment claim. Therefore, the documentary evidence submitted by the applicant cannot be considered as having any probative value or evidentiary weight.

Further, an applicant raises serious questions of credibility when asserting an entirely new claim to eligibility on appeal. In such instances, the Service may require credible evidence to support the new claim as well as a complete plausible explanation concerning the applicant's failure to advance this claim initially. The instructions to the application do not encourage an applicant to limit his claim; rather they encourage the applicant to list multiple claims as they instruct him to show the most recent employment first.

The applicant's claim to have been employed by was first brought to the Service's attention at the appellate level. Unsupported by evidence, his explanation as to why this entirely new claim to eligibility was not advanced on the application or at the interview lacks credibility. The very purpose of the Form I-700 application is to allow the applicant to claim the qualifying agricultural employment which entitles him to the benefits of status as a special agricultural worker.

Issues of credibility arise when an applicant claims employment which is called into question through Service investigation, and later attempts to establish eligibility with a different employer, heretofore never mentioned to the Service. The applicant's advancement of a new employment claim does not address, resolve, or diminish the credibility issues raised by the adverse evidence regarding the applicant's initial claim. Therefore, the applicant's overall credibility remains in question. For this reason, the applicant's new claim of employment for Elmer Andreotti will not serve to fulfill the qualification requirements necessary for status as a special agricultural worker.

The applicant has failed to 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.