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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

AUG 04 2004

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date:

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. The file has 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, Director
Administrative Appeals Office

DISCUSSION: The application for temporary resident status as a special agricultural worker (SAW) 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 statutory period.

On appeal, the applicant reiterates his original claim of employment of 123 man-days for at ranch in Yuba City, California from July 4, 1984 to December 25, 1984. The applicant advances a new and separate claim of employment of 107 man-days for the same location from August 1985 to December 1985. The applicant submits employment documentation in support of his new claim and counsel submits a statement in support of the appeal.

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, provided he is otherwise admissible under section 210(c) of the Immigration and Nationality Act (INA) and is 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 123 man-days of general farm work with peaches and prunes fo nch in Sutter County, California from July 4, 1984 to December 25, 1984. In support of his claim, the applicant submitted a corresponding Form I-705 affidavit, an employment letter containing a monthly man-days breakdown, and a separate affidavit of employment all signed by . The supporting documents all list the address of in . In his separate affidavit of employment, stated that the applicant resided in his farm house at ad during the course of his employment.

In addition, the applicant listed a separate claim of employment for at "Mobile Service" in "San Fran." from February 1985 to February 24, 1988, the date the Form I-700 application was executed. In support of this claim, the applicant submitted a corresponding employment letter signed b owner of Vic's ia. However, the applicant's employment fo non-qualifying employment in that it appears to have taken place at a gas and service station, rather than being agricultural in nature.

It is noted that at part #23 of the Form I-700 application where applicants were asked to list all periods of residence in the United States beginning from May 1, 1983, the applicant listed nia from July 1984 to December 1984, an from January 1985 to November 1986.

The record reflects that the applicant was subsequently interviewed on March 10, 1988 by an officer of the Immigration and Naturalization Service, or the Service (now Citizenship and Immigration Services, or CIS). The record contains the notes of the interviewing Service officer in the Form I-696, Legalization/SAW Examinations Worksheet. The notes contain the following sentence: "I worked for growe on the farm and picked peaches and pruned trees from 7/4/84 to 12/27/84." The notes reflect that the applicant affirmed the dates of his employment fo by affixing his signature just below this sentence on the Form I-696 worksheet.

The director denied the application because the applicant's performance of qualifying agricultural employment did not take place during the requisite statutory period from May 1, 1985 to May 1, 1986, instead having occurred from July 4, 1984 to December 25, 1984.

On appeal, the applicant reaffirms his original claim of employment for from July 4, 1984 to December 25, 1984, and puts forth a new and separate claim of employment of 107 man-days of general farm work with peaches and prunes for from August 1985 to December 1985. The applicant states that he had not advanced this new and later claim of employment at any prior point in these proceedings because he believed the original claim of employment for from July 1984 to December 1984 was sufficient to establish his eligibility. The applicant contends that the Service officer who conducted his interview on March 10, 1988, never

informed him that he needed to prove at least 90 man-days of qualifying agricultural employment during the eligibility period from May 1, 1985 to May 1, 1986. The applicant asserts that this is the reason why he never amended his application to include the new and later claim of employment from August 1985 to December 1985.

As has been previously noted, the applicant claimed employment with at "Mobile Service" in San Francisco, California from February 1985 to February 24, 1988 on his original Form I-700 application. The applicant submitted a corresponding employment letter signed by in support of this claim. Furthermore, at part #23 of the original Form I-700 application the applicant listed Francisco, California as his only residence from January 1985 to November 1986. The applicant's new claim to have worked from August 1985 to December 1985 is directly contradicted by his own prior testimony, as well as that of regarding his place of employment after February 1985. Furthermore, the applicant's new claim to have resided s ranch in Yuba City, California from August 1985 to December 1985 is directly contradicted by his previous testimony that his sole residence was located at an address in San Francisco, California from January 1985 to November 1986. The applicant failed to provide any explanation for these contradictions. To accept the applicant's new claim that he worked for and resided with from August 1985 to December 1985 would require that his own prior testimony be rejected, as well as that of The applicant has failed to provide any compelling reason why his prior testimony as well as that should be considered as either false or erroneous.

The explanation put forth by the applicant that he had not advanced the new and later claim of employment at any prior point in these proceedings because he believed the original claim of employment for from July 1984 to December 1984 was sufficient to establish his eligibility cannot be considered as adequate. The instructions to the Form I-700 application do not encourage applicants to limit their claims; rather, applicants are encouraged to list multiple claims, as they are instructed to show the most recent employment first. The adequacy of this explanation is further lessened because the applicant could have listed multiple claims of employment on his original application and then subsequently obtained employment documentation. Moreover, the fact that applicant listed the additional claim of employment for from February 1985 to February 24, 1988 on his original Form I-700 application only serves to further minimize the adequacy of this explanation.

The applicant's contention that the Service officer who conducted his interview never informed him that the dates of eligibility period were from May 1, 1985 to May 1, 1986 can neither be confirmed nor denied from the record. However, it can be definitively determined that the applicant specifically affirmed the dates of his employment for 7/4/84 to 12/27/84, when he signed a statement to this effect on the Form I-696 worksheet during the course of his interview on March 10, 1988.

Counsel submits a statement in which he reiterates the applicant's declarations regarding his failure to advance this later claim of employment for However, the unproven assertions of counsel are not evidence. *Matter of Obaigbena*, 19 I. & N. Dec. 533, 534 note (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I. & N. Dec. 503, 506 (BIA 1980). Moreover, the probative value of counsel's statements is severely limited by the contradictions, inadequacies, and discrepancies cited above.

The applicant also submits a co-worker affidavit, signed by in support of the subsequent period of employment. In his affidavit, declares that he met the applicant when they were working for erforming qualifying agricultural services with peaches and prunes at his ranch in Yuba City, California. states that he and the applicant worked and resided at the ranch in the period from May 1, 1985 to May 1, 1986. However, the probative value of estimony is limited in that he failed to state either the exact number of man-days worked by the applicant or the specific period he and the applicant worked together. The probative value of this co-worker affidavit is further compromised by the conflicting and contradictory evidence and testimony discussed above. Therefore, the affidavit of annot be considered as sufficient to corroborate the applicant's claim of employment for G hl from August 1985 to December 1985.

The applicant submits a new employment affidavit and a separate declaration both signed by In his declaration states that he employed the applicant from August 1985 to December 1985, in addition to the previous period of employment from July 1984 to December 1984 indicates

that the applicant resided at his ranch in Yuba City, California during the subsequent period of employment in both of these new supporting documents. However, the credibility of these new supporting documents is highly questionable in light of the numerous previously discussed contradictions, inadequacies, and discrepancies.

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 credibility of the applicant's original claim of employment for [redacted] from July 4, 1984 to December 25, 1984 has never been questioned during these proceedings. Rather, the applicant was determined to be ineligible because his initially claimed employment occurred outside of the twelve-month eligibility period ending May 1, 1986. An applicant raises serious questions of credibility when asserting a substantially revised and new claim to eligibility for [redacted] during the eligibility period from May 1, 1985 to May 1, 1986, only after being informed that he was statutorily ineligible because he originally claimed employment that did not occur during the requisite period. For this reason, the applicant's new and later claim of employment for [redacted] will not serve to fulfill the qualification requirements necessary for status as a special agricultural worker.

The validity of the applicant's amended claim of employment must be deemed questionable at best. Under these circumstances, it cannot be concluded the applicant has credibly established that he performed at least 90 man-days of qualifying agricultural employment during the statutory period ending May 1, 1986. Consequently, the applicant has not demonstrated his eligibility for temporary resident status as a special agricultural worker.

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