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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FEB 02 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: 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 determination was based on information provided by Fred and Anna Wickersham, for whom the applicant claimed to have worked.

On appeal, the applicant reaffirmed his claim to have performed at least 90 man-days of qualifying agricultural employment, and submitted additional documentation in support of his appeal. The applicant, on appeal, also asserted that he failed to receive the notice of intent to deny from Citizenship and Immigration Services (CIS). A copy of the applicant's entire legalization file was subsequently sent to the applicant by the service center. However, the material was later returned by the U.S. Postal Service as the address provided by the service center was out of date. Subsequently, on September 8, 2003, the AAO re-sent a copy of the applicant's legalization file to his most current address of record. The applicant did not respond.

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 Act 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 application, Form I-700, the applicant claimed 93 man-days of qualifying agricultural services for [redacted] at Toney's Berry Farm in Clackamas County, Oregon, from May 25, 1985 to May 1, 1986. In support of the claim, the applicant submitted a Form I-705 affidavit and a separate employment letter, both purportedly signed by [redacted]

In attempting to verify the applicant's claimed employment, the Service acquired information which contradicted the applicant's claim. In the United States District Court for the District of Oregon, Fred Wickersham pled guilty to conspiracy to falsify and sell thousands of affidavits attesting to employment on his farm. As part of his plea agreement, Fred and Anna Wickersham gave sworn statements in which they provided, based on their records and memory, a list of 31 names of individuals who did *in fact* actually perform at least 90 man-days of qualifying agricultural employment for them. They also provided another list of 101 names of individuals (again based on their memory and records) they *believed* worked for them, but for less than 90 days. *The applicant's name does not appear on either list.* Both Wickershams also stated that they have no other records, documentation or personal recollection which would support *any* other Form I-705 affidavit. Several thousand aliens are known to have filed applications claiming to have performed 90 or more man-days of employment for the Wickershams.

On March 1, 1991, the director attempted to adivse the applicant in writing of the adverse information obtained by the Service, and of the Service's intent to deny the application. However, the director's notice was returned by the U.S. Postal Service, which stamped the envelope "Returned to Sender; Unclaimed." The director then denied the application.

On appeal, the applicant asserted that, in addition to his claimed employment at Toney's Berry Farm, he also worked for an additional employer during the same period. In support of this claim, the applicant submitted

an I-705 affidavit from farm labor contractor indicating the applicant performed vineyard duties for a total of 107 man-days. As was evidently a contractor, it is not known why he simply showed "Ledesma" as the name of the farm where the work took place. A contractor would normally bring workers to one or more farms.

An applicant raises serious questions of credibility when asserting an entirely new claim to eligibility which was not initially put forth on the application. 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 applicant's claim to have been employed by was first brought to the Service's attention at the appellate level. At the time of filing, the applicant did not reference this employment on the Form I-700 application, nor did the applicant submit corroborating materials to document the alleged employment with . Moreover, the applicant neglected to mention this additional employment at the time of his legalization interview.

The applicant, on appeal, asserted that he did not include this employment in his original documentation because he felt he was able to document at least 90 man-days of agricultural labor with Toney's Berry Farm and there was no further need to reference any additional employment. However, the very purpose of the Form I-700 application is to allow the applicant to claim *all* of the qualifying agricultural employment which entitles him to the benefits of status as a special agricultural worker. The instructions to the application do not encourage an applicant to limit his claim; rather, they encourage him to list multiple claims as they instruct him to show the most recent employment first..

Larger issues of credibility arise when an applicant claims employment which is called into question through a 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 as regards the applicant's initial claim of employment at Toney's Berry Farm. Therefore, the applicant's overall credibility remains in question. For this reason, the applicant's new claim of employment for Alfredo Ledesma will not serve to fulfill the qualification requirements necessary for status as a special agricultural worker.

The applicant, on appeal, also submitted an affidavit from , who represents himself as an alleged co-worker of the applicant. The affiant, asserts that he and the applicant purportedly worked with strawberries, cauliflower and pumpkins at Toney's Berry Farm in Sandy, Oregon and other, unspecified farms from June to August 1985, and thereafter during the same season.

The affidavit from however, fails to specify the number of man-days worked by the applicant, the applicant's exact dates of employment, and the names and locations of the *other* farms where the work was allegedly performed by the applicant and the affiant. Without this information, the affidavit from Mr. Hernandez is of little or no probative or evidentiary value. Nor does it serve to clarify or resolve the adverse evidence acquired by the Service regarding the applicant's claim to have performed agricultural employment at Toney's Berry Farm.

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.).

While the applicant, on appeal, reiterates his claim to employment at Toney's Berry Farm, he has provided only an insufficient affidavit from an alleged co-worker to rebut the adverse evidence in this matter. Unlike some other applicants, he has not provided details regarding his claimed employment at Tony's Berry Farm, such as the name of his foreman. In view of that, [redacted] guilty plea, the fact that a massive number of applicants all claimed to have worked at Toney's Berry Farm at the same time, it is concluded the applicant has not established the performance of at least 90 days of employment for the Wickershams. 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.