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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: JUL 21 2004

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. 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, Director
Administrative Appeals Office

DISCUSSION: The application for temporary resident status as a special agricultural worker was denied by the Director, Northern Regional Processing Facility, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained.

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. The decision was based on adverse information relating to the applicant's claim of employment for Kansas City Produce (KCP).

On appeal, the applicant claims he worked at Stephenson's Orchards as well as at KCP.

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 Immigration and Nationality 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).

The applicant claimed on his application to have engaged in 145 man-days of qualifying agricultural employment for from May to November 1985. He also indicated he worked there during the preceding season.

In support of the agricultural claim, the applicant submitted two corresponding affidavits from who indicated he was the applicant's immediate supervisor and the person in charge of all farm payroll. He also provided evidence of having worked at in November and December of 1986.

In attempting to verify the applicant's claimed employment, the facility director acquired information that seemingly contradicted the applicant's claim. According to the director payroll records showed that only worked there for eight days during the twelve-month qualifying period. The director concluded that would not have been qualified to attest to anyone's employment beyond eight days.

On December 20, 1990, the applicant was advised in writing of the adverse information obtained by the director, and of the director's intent to deny the application. The applicant was granted thirty days to respond. No response was received, and the director then denied the application.

Contained in the record is a photocopy of an affidavit dated November 1, 1988 from the owner of He stated that was employed as a field foreman, field man and bookkeeper responsible for preparing the entire farm payroll from August 1984 though June 1986. Although this document was apparently in the record at the time the application was adjudicated, it is not clear why the director did not address it. Regardless, in the course of adjudicating many appeals this office has acquired very extensive evidence which makes it clear that orked at throughout the qualifying period. Such evidence includes affidavits from other crew leaders, farmers that contracted with the Nurse Coordinator of the Migrant Health Program of the Kansas City/Wyandotte County Department of Health, and many more. Court testimony in the bankruptcy proceedings, and in some of the trials of individuals involved in creating false documents, further establishes without doubt that had worked there for many years, including the year in question.

On appeal, the applicant also provided an affidavit from , attesting to the applicant's employment at for 11 days during the qualifying period and for many more days during the two preceding years. explained that his work records were too bulky and voluminous to attach, and that the Immigration and Naturalization Service was welcome to inspect his records at his office. The applicant stated that when did not have enough work for the workers, they would be sent to KCP. The applicant provided the telephone number of foreman, and encouraged the director to call or the foreman if he had any doubts. An immigration officer did then speak to who told him that he believed the affidavit was genuine, although it normally should have had a photograph attached. While this employment for Mr. during the qualifying period only constituted 11 days, the fact that the claim was found to be valid speaks well for the applicant's overall credibility.

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.).

Unlike the majority of applicants who claimed to have worked at KCP, the applicant did not simply file one affidavit initially and follow it up with a generic, boilerplate appeal. The applicant has provided numerous documents and has provided some specifics regarding his work during the qualifying period in quite a convincing manner.

Under these circumstances, it is concluded that the applicant has established 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.