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U.S. Citizenship and Immigration Services

[redacted]

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FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: JUL 23 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:

[redacted]

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. A subsequent appeal was dismissed by the Legalization Appeals Unit (LAU), now the Administrative Appeals Office (AAO). The case has now been remanded by the United States Court of Appeals for the Ninth Circuit. The AAO's previous decision will be affirmed.

On February 3, 1989 the facility 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. In a decision dated July 30, 1990 the LAU agreed, concluding that the applicant had worked no more than 61 days during the requisite period. In a decision dated March 15, 2004 the court noted that the applicant had submitted evidence prior to the decision by the LAU which was not considered in the adjudication. The order stated that pursuant to 8 U.S.C. § 1106(e)(2)(B) the LAU was required to consider evidence the regional processing facility had not considered, but had been submitted prior to the LAU decision.

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 worked for in California, and for in Washington State. He showed the employment for Mr. occurred from June 1986 to June 1987, which is outside of the twelve-month period ending on May 1, 1986. The applicant claimed to have worked for for seven days in February 1985, and for two days in 1987. This claim also relates to periods outside of the requisite period ending on May 1, 1986

The applicant indicated that he worked 90 days for Mr. from March to May 1986. However, there were only 62 days from March 1 through May 1, 1986 inclusive; any days worked beyond May 1, 1986 were outside of the requisite period. Thus, *based on his claim*, he could have worked a maximum of 62 days for Mr. during the requisite period.

As pointed out by the facility director and the LAU director, the evidence of employment for did not support the claim of 90 days of work. The Form W-2 Wage and Tax Statement showed the applicant earned only $480, a figure not indicative of three months full-time employment, based on a five or six day work-week, much less a seven day work-week. The other evidence of employment for Mr. was a Form I-705 affidavit completed by the applicant's aunt, who is not known to have the specific knowledge of his employment that the actual grower, foreman or bookkeeper would have.

On appeal the applicant did not address the directors' concerns regarding the evidence.

Subsequent to the filing of his application, but prior to its denial, the applicant sent an affidavit from Jesse Soto to the facility director. It was not forwarded to the LAU prior to the adjudication of the appeal. It was this evidence that led to the court remanding the case for further consideration.

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.).

In his October 27, 1989 affidavit, which he describes as an employment verification, [redacted] states the applicant was hired on May 2, 1985, and that the applicant thinned plums until his employment was terminated on February 20, 1986. He does not explain what *his* position is, nor does he state the basis for his purported knowledge of the applicant's employment. [redacted] does not indicate where the employment occurred, or how many days the applicant worked. Although the document has a space with the notation "photograph of employee" under it, no photograph is attached. The affidavit from [redacted] contains four alterations where typed information was whited out and other information typed over it. The original information which can be viewed from the reverse of the affidavit, includes a different date of termination of employment that appears to be in June of 1985. Given the lack of detail and possible alterations, this document is of little probative value and will not be considered proof of employment.

The maximum number of days the applicant could have worked for [redacted] during the period between March 1 and May 1, 1986 is only 62. As there is no other acceptable evidence of employment, the applicant has failed to credibly establish the performance of at least 90 man-days of qualifying agricultural employment during the twelve-month statutory period ending May 1, 1986. Consequently, the applicant is ineligible for adjustment to temporary resident status as a special agricultural worker on this basis.

In addition, the record reveals that the applicant pled guilty on November 5, 1986 to Attempting to Elude a Pursuing Police Vehicle, a felony in the state of Washington. This information was not known by the LAU when the appeal was adjudicated. An alien who has been convicted of a felony or three or more

misdemeanors in the United States is ineligible for temporary resident status. 8 C.F.R. § 210.3(d)(3). Within the legalization program, there is no waiver available to an alien convicted of a felony or three misdemeanors committed in the United States.

An alien applying for adjustment of status has the burden of proving by a preponderance of the evidence that he or she is admissible to the United States under the provisions of section 210(c) of the Act, 8 U.S.C. 1160, and is otherwise eligible for adjustment of status under this section. 8 C.F.R. § 210.3(b)(1). The applicant has failed to meet this burden.

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