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U.S. Department of Homeland Security
20 Massachusetts Ave. NW, Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

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APR 28 2005

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

IN RE: Applicant: [redacted]

PETITION: 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 the matter 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 District Director, Phoenix, Arizona, reopened and denied again by the Director, Western Service Center. The matter is before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

In both decisions of denial, 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 decisions were based on evidence adverse to the applicant's claim of employment for

In response to the more recent decision of denial, the applicant requested a copy of his legalization file through the Freedom of Information Act (FOIA). The Service complied with the request on July 27, 1995. On appeal from the initial decision of denial, the applicant reaffirmed his claimed employment in agriculture. The applicant's employment claim and the evidence are addressed below.

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 93 man-days employment harvesting lettuce and cabbage for from May 15, 1985 to August 30, 1985.

In support of the claim, the applicant submitted a corresponding Form I-705 affidavit and a separate form employment verification letter, both of which were purportedly signed by

On May 23, 1988, the District Director, Phoenix, Arizona determined that the applicant had not credibly established his claim to eligibility and denied the application. On appeal, the applicant reaffirmed his claimed agricultural employment. The applicant did not submit any additional evidence in support of his claimed employment.

On January 24, 1991, in a Notice of Intent to Deny, the Director, Western Service Center, noted that the Service possessed evidence adverse to the applicant's employment claim. Specifically, a Service officer contacted an official of the Cooperative Extension Service of the University of Arizona, and was informed that lettuce and cabbage are not harvested during the months claimed by the applicant. The applicant was granted 30 days to respond. The record does not contain a response from the applicant.

The Director, Western Service Center, found that the applicant had not overcome the adverse evidence and denied the application on September 25, 1991. Subsequent to receiving a copy of his legalization file, the applicant has made no statements, nor has he submitted any additional documentary evidence in support of his claim to eligibility.

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.).

According to state agricultural officials, lettuce and cabbage are not harvested in Arizona during the summer months. The applicant has not addressed nor overcome this derogatory evidence which directly contradicts his claim. Further, it must be noted that, on May 5, 1989 pled guilty to violating 8 USC Section 1160(b)(A)(ii). This section deals with creating and supplying false documents for applicants for status as special agricultural workers. Given that the applicant's claim relies entirely on documents signed by Mr this fraud conviction cannot be overlooked when evaluating the overall credibility of the applicant's claim.

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.

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