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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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FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: APR 28 2005

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: 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 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, Indio, California, 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 fo at the Duke Wilson Company.

Although the applicant did not respond to the more recent decision of denial, her appeal taken from the previous decision of denial is still in effect. In that appeal, the applicant reaffirmed her claimed employment for stating that she had attempted to contact Mr acquire additional evidence, but was unsuccessful.

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 108 man-days of qualifying agricultural employment at the Duke Wilson Company from May 1985 to May 1986.

In support of her claim, the applicant submitted a corresponding Form I-705 affidavit and a separate employment letter signed by

On June 13, 1988, the District Director, Indio, California, determined that the applicant had not credibly established her claim to eligibility and denied the application. On appeal, the applicant reaffirmed her claimed employment stating that she had attempted to contact Mr o acquire additional evidence, but was unsuccessful. The applicant stated that she could not get payroll record from th Company because they went bankrupt. The applicant did not submit any additional evidence in support of her claimed employment in agriculture.

On January 15, 1991, the application was reopened and on that date, 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, on December 1, 1989, a Service officer spoke to custodian of employee and payroll records for the Duke Wilson Company. Ms. stated that was employed by mpany as a foreman from April 1984 to July 1984, and at no time thereafter. consequently was not employed at the Duke Wilson Company during the qualifying period, and could not have witnessed the employment of any applicants claiming to have worked there. 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 February 5, 1992. The record does not contain any evidence that the applicant responded to the denial notice.

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 the custodian of Duke Wilson Company's payroll and employee records, was not employed as a foreman at any time after July 1984. Further, the applicant has not established that she was an employee of Duke Wilson Company during the qualifying period. The applicant has not addressed nor overcome such derogatory evidence which directly contradicts her claimed employment. Therefore, the documentary evidence submitted by the applicant cannot be considered as having any probative value or evidentiary weight.

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.