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

U.S. Citizenship and Immigration Services

L4

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: APR 27 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. 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 initially denied by the District Director, Los Angeles, and subsequently reopened by the Director, Western Regional Processing Facility. The application was denied again by the Director, Western Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The directors 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. These decisions were based on adverse information acquired by the Immigration and Naturalization Service, or "the Service," (now Citizenship and Immigration Services, or CIS) relating to the applicant's claim of employment for the Duke Wilson Company, under the supervision

On appeal from the district director's denial, the applicant reaffirmed his claim of employment for the Duke Wilson Company under the supervision of The applicant declared that Mr should be able to produce employment records because he was the individual who hired him and paid him in cash.

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 (INA) 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 99 man-days harvesting grapes for in Coachella, California from May 1985 to May 1986.

In support of the claim, the applicant submitted a Form I-705 affidavit and a separate employment letter both signed by indicated that he was a field supervisor for the and supervised the applicant for 99 man-days cultivating grapes. indicated that the applicant worked at various ranches in Riverside County, California during the course of his purported employment for the

In attempting to verify the applicant's claimed employment, the district director acquired adverse information relating to claims of agricultural employment for the under the supervision of However, rather than issuing a notice of intent to deny informing the applicant of this adverse information, the director merely incorporated this information into a notice of denial issued on May 25, 1988.

On appeal from this initial denial, the applicant reiterated his claim of employment for the Company under the supervision of The applicant stated th should be able to produce employment records because he was the individual who hired him and paid him in cash.

On November 11, 1988, the matter was reopened so that the applicant could be issued a notice of intent to deny that properly informed him of adverse information relating to his claim of employment for the under the supervision of and also allowed him the opportunity to respond to such adverse information prior to any final action being taken regarding his application. However, better and more specific adverse information was acquired on December 1, 1989, when a Service officer spoke to custodian of employee and payroll records for the stated th was employed by th a foreman from April 1984 to July 1984, and at no time thereafter. consequently was not employed at th during the qualifying period, and could not have witnessed the employment of any applicants claiming to have worked there.

On July 29, 1991, the center director attempted to advise the applicant in writing of this adverse information, and of his intent to deny the application. However, the record shows that the notice was returned by the United States Postal Service marked as "attempted, not known."

The center director concluded the applicant had not overcome the derogatory evidence, and denied the application. However, the record reflects that this notice of denial was returned by the postal authorities as undeliverable mail. Therefore, copies of both the notice of intent to deny and notice of denial were remailed to the applicant at his most current address of record on February 2, 2004. The applicant was accorded thirty days to supplement his original appeal. The record shows that this correspondence was not returned by the postal authorities as either unclaimed or undeliverable. As of the date of this decision, the applicant has failed to submit a brief, statement, or documentation to supplement his appeal. Therefore, the record shall be considered complete.

The applicant reaffirmed his claim to have performed qualifying agricultural services for the Company under the supervision of The applicant also declared that possessed employment records that would support his claim of employment. However, the applicant has failed to subsequently submit any of the purported employment records possessed by The applicant provided no explanation as to why he was unable to obtain such records if in fact they exist and he worked as originally claimed. In addition, the applicant failed to provide any evidence that could overcome the fact that an official of the informed the Service that the applicant's purported field supervisor, did not work for this enterprise during the eligibility period from May 1, 1985 to May 1, 1986.

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. The applicant has not overcome such derogatory evidence which directly contradicts his claim. 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.