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U.S. Citizenship and Immigration Services

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APR 27 2004

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

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:

Attached 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: This matter is an application for temporary resident status as a special agricultural worker initially denied, reopened and then denied again by the Director, Western Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director initially denied the application for lack of prosecution because the applicant failed to appear for the required interview regarding his application for temporary residence as a special agricultural worker.

On appeal from the initial denial, the applicant indicated that he never received an interview notice.

The director subsequently reopened the matter on January 21, 1992, to allow the applicant the opportunity to appear for the required interview. The record shows that the applicant subsequently appeared for the interview on March 3, 1992.

The director subsequently denied the application again because the applicant failed to establish the performance of at least 90 man-days of qualifying agricultural employment during the eligibility period. This decision was based on adverse information provided to the Immigration and Naturalization Service, or the Service (now Citizenship and Immigration Services, or CIS) regarding the applicant's claim of employment for and Ray Farmer under the supervision o

The record shows that applicant supplemented his previous appeal by submitting co-worker affidavits in support of his claim of agricultural employment. These documents shall be incorporated into the applicant's appeal and will be discussed 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 Immigration and Nationality Act (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 95 man days picking grapes and bell peppers for at his farm August 1985 to November 1985. The applicant also claimed 97 man-days cultivating grapes for Ray Farmer at his farm from December 1985 to March 1986. The applicant indicated that both farms were located in San Joaquin County, California.

In support of the claim, the applicant submitted a Form I-705 affidavit and separate employment letter, both signed by On the Form I-705 affidavit ndicated that he was both a foreman and farm labor supplier and that work performed by the applicant had taken place farm and farm. In the separate employment letter ndicated that there were no existing records because the applicant was paid in cash.

In attempting to verify the applicant's claimed employment, the director acquired information which contradicted the applicant's claim. In October 1988 stated in a telephone conversation with a Service officer that, during the qualifying period, had worked for him only from August 28, 1985 to September 15, 1985. This period is only nineteen days long. On May 7, 1989 stated in a letter to the Service that his farm "employed about 22 people during harvest which would last about two or three weeks added that, contrary t assertion, "we do not pay cash wages." Furthermore, in a subsequent telephone conversation with a Service officer on February 1, 1990 reiterated that he employed in the nineteen day period from August 28, 1985 to September 15, 1985 verified th had worked as his crew leader for only eleven days in that nineteen day period.

Additionally, in a letter dated June 5, 1989 stated that his vineyard began operating in 1986. Mr declared that during August of 1986, the vineyard "hired a dozen people for 4 to 6 days to pick the grapes and in December [of 1986], again, a dozen people for 6 days to do the pruning." Mr indicated the vineyard has "...no other employees. Wages have always been paid by check." It is apparent no farm workers were employed by during the qualifying period from May 1, 1985 to May 1, 1986.

Furthermore, led guilty to document fraud charges on September 12, 1989. As part of his plea agreement, Mr provided a list of valid employees, as well as a list of individuals who had claimed employment for him, but whose employment documents contained false, fictitious, and fraudulent statements. The applicant is not named on the list of valid employees provided b The applicant was granted thirty days to respond to the notice.

On July 14, 1992, the director advised the applicant of adverse information relating to his claim of agricultural employment, and of his intent to deny the application. The applicant was granted thirty days to respond. Although the applicant did submit a response to the notice, the director failed to acknowledge that this response had been received. As noted previously, such documentation has been incorporated into the applicant's appeal. The director determined the applicant had failed to overcome the adverse evidence, and denied the application for the second time on August 28, 1992.

On appeal, the applicant reaffirms his claim of employment fo by submitting two co-worker affidavits signed b and respectively. Both affiants declared that they and the applicant together worked in the fields cultivating grapes with in Lodi, California during the period from May 1, 1985 to May 1, 1986. However, neither affiant provided the name of the employer, the exact number of man days worked, the specific dates of such employment, or the names of farms where such work purportedly occurred. Furthermore, neither affiant addressed the adverse information regarding claims of employment for and Ray Farmer as attested to b Therefore, it cannot be concluded that the applicant has overcome such derogatory information.

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.).

employe for only eleven days over a nineteen day period in 1985, and paid all employees by chec always paid employees by check, and did not employ any farm workers during the qualifying period. The applicant has provided no credible evidence or statement to overcome the 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 establish credibly 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.