U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

U.S. Citizenship and Immigration Services

[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:

[redacted]

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identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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 termination of temporary resident status by the Director, Western Service Center, is now before the Administrative Appeals Office (AAO) on Appeal. The appeal will be dismissed.

The director terminated the temporary resident status of the applicant as a result of serious credibility issues raised by adverse information conveyed by the applicant to an officer of the Immigration and Naturalization Service or "the Service."

On appeal, counsel for the applicant submits photocopies of previously submitted statements in support of the applicant's claim.

In order to be eligible for temporary resident status as a special agricultural worker (SAW), 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).

Section 210(a)(3)(B)(i) of the Act, 8 U.S.C. 1160(a)(3)(B)(i), provides for the termination of status of a special agricultural worker if the Attorney General finds by the preponderance of the evidence that the adjustment to temporary resident status was the result of fraud or willful misrepresentation as set out in section 212(a)(6)(C)(i) of the Act, 8 U.S.C. 1182(a)(6)(C)(i). Termination proceedings must have commenced before the date (December 1, 1990) on which the alien became eligible for adjustment to lawful permanent resident status. 8 C.F.R. § 210.4(d)(3)(ii).

On the Form I-700 application, the applicant claimed to have performed qualifying agricultural employment at Allison Orchard in Benton County, Washington, as follows:

- a total of 96 man-days from May 1, 1984 to May 1, 1985; and
- a total of 91 man-days from May 1, 1985 to May 1, 1986.

In support of the claim, the applicant submitted a corresponding Form I-705 affidavit and a separate employment affidavit, both signed by [redacted] who is designated on the I-705 as "grower."

It is noted that the applicant's claimed 91 man-days from May 1, 1984 to May 1, 1985 is non-qualifying as it occurred *prior* to the requisite twelve-month eligibility period ending May 1, 1986.

Subsequently, the Service acquired information which directly contradicted the applicant's claim. The record of proceedings contains a Form I-213 Record of Deportable Alien, which indicates that the applicant had been apprehended by a Service officer on April 5, 1988. On that occasion, the applicant had admitted in the presence of the Service officer that she *first* entered the U.S. in February 1988 and that, prior to that occasion, she had resided with her parents in her native Mexico. The applicant also acknowledged having paid the sum of $100 to an unidentified female in order to acquire fraudulent documentation in support of her application. Thus, the applicant, by her own admission, conceded that she did not perform the requisite qualifying agricultural employment during the eligibility period.

On November 15, 1990, the applicant was advised in writing of the adverse information obtained by the Service, and of the Service's intent to terminate the applicant's temporary resident status. The applicant was granted thirty days to respond. In response to the Service's notice of intent to terminate, the applicant, through her attorney, submitted the following:

- a personal statement from the applicant, in which she recanted her previous admission to having provided false documentation in support of her application and reaffirmed her claim to having worked with grapes fo at during the qualifying period. In her statement, the applicant also asserts that her admission to having purchased fraudulent employment documentation resulted from coercion and duress on the part of Service personnel subsequent to her having been apprehended on April 5, 1988;

- statements from the applicant's siblings all of whom assert that the applicant first entered the U.S. in 1983 and that they were all co-workers at for for more than 90 man-days during the qualifying period ending May 1, 1986. The applicant's siblings, in their statements, also make reference to having traveled to work together in a van along with an unidentified woman and a man, and to having worked together at other unspecified places in the Benton County area during the period in question; and

- statements from three acquaintances all of whom attest to having known the applicant since 1983 and 1984. further attest to the applicant having performed agricultural field work during the time they first became acquainted with her.

On October 30, 1992, the director terminated the applicant's temporary resident status, having determined that the evidence provided by the applicant failed to rebut the derogatory evidence or overcome the grounds of ineligibility resulting from the director's finding that she fraudulently put forth her claim to SAW eligibility.

On appeal, counsel for the applicant submits photocopies of statements submitted previously in response to the director's notice of intent to terminate.

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.).

The record reveals serious discrepancies between the applicant's employment claim as set forth in the application Form I-700 and her own subsequent testimony in the presence of a Service officer, in which she conceded, by her own admission, that she did not perform the requisite qualifying agricultural employment during the eligibility period, as originally claimed, and that she purchased fraudulent documentation from an unspecified individual for the sum of $100.

In her personal statement in response to the notice of intent, the applicant asserted that her statement to the Service officer taken at the time of her apprehension on April 5, 1988 was the result of coercion and duress. However, neither the applicant nor counsel has adduced any additional independent, credible evidence to substantiate this claim. Nor is there any indication in the record that the applicant's statement to the officer in question was not given freely or of her own volition.

The affidavits provided by counsel from the applicant's siblings and acquaintances are not notarized or attested to. These statements, attesting to the applicant's claimed employment at Allison Orchards for 90 man-days during the qualifying period ending May 1, 1986, merely repeat the applicant's claim without providing new, independent, corroborative evidence to support that claim. Moreover, the statements fail to indicate the *specific* number of man-days worked by the applicant, the applicant's *exact* dates of employment or the site/location where the alleged agricultural work was performed. Nor do they provide a description of the actual duties purportedly performed by the applicant during the course of her agricultural employment. Furthermore, the statements from the applicant's acquaintances do not indicate that they were co-workers or supervisors of the applicant at [redacted] As such, they fail to explain how they would have had *direct, specific knowledge* of the applicant's employment [simple acquaintance with the applicant is not sufficient to establish direct, personal knowledge of the applicant's employment]. Without this information, the statements carry little or no probative or evidentiary weight.

The applicant has failed to resolve the serious questions of credibility raised by her admission to a Service officer that that she did not perform qualifying agricultural employment during the requisite eligibility period, as originally claimed, and that she purchased fraudulent documentation to support her claim. Accordingly, the applicant has failed to credibly rebut the director's determination that she fraudulently put forth her claim to SAW eligibility. Consequently, the applicant is ineligible for the benefit of adjustment to temporary resident status as a special agricultural worker.

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