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

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: APR 28 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]

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 denied by the Director, Northern Regional Processing Facility. The matter was remanded by the Chief, Legalization Appeals Unit, now the Administrative Appeals Office (AAO). The application was then denied by the Director, Nebraska Service Center, and certified for review to the AAO. The decision will be affirmed.

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. The decisions were based on adverse information relating to the applicant's claim of employment for (KCP).

On appeal of the first decision, counsel questioned the legitimacy of the adverse information.

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 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).

The applicant, a native of the Philippines who had been admitted to the United States as a student, claimed on his application that he had engaged in 130 man-days of qualifying agricultural employment for KCP from May to November 1985. He provided no indication that he ever worked in agriculture other than during the period required to qualify for temporary resident status. In fact, the record reveals he worked in a restaurant subsequent to the 1985-86 period.

In support of the agricultural claim, the applicant submitted a corresponding affidavit fro who indicated he was a crew leader at KCP.

In attempting to verify the applicant's claimed employment, the facility director acquired information that seemingly contradicted the applicant's claim. According to the director, the owner of KCP stated that did not work there during the requisite twelve-month period. The director further concluded that KCP's payroll records supported the owner's statement.

On December 14, 1990, the applicant was advised in writing of the adverse information obtained by the director, and of the director's intent to deny the application. The applicant was granted thirty days to respond. Counsel then requested a copy of the record through the Freedom of Information Act. His request was complied with.

The director concluded the applicant had not overcome the derogatory evidence, and denied the application. On appeal, counsel stated that the copy of the record he had received had been so heavily edited that it made no sense. However, he also stated that, in another case, he had received an unedited version of the adverse evidence and investigation. Counsel concluded by stating the adverse evidence did not support a finding that the applicant had not worked at KCP as claimed. He did not provide any further evidence of the applicant having worked at KCP.

On September 6, 1996 the Legalization Appeals Unit remanded the matter, finding that some of the director's conclusions had not been adequately documented in the record.

The center director wrote to counsel on February 2, 1998 and provided him with an extensive package of documents concerning the KCP investigation, including evidence of having pled guilty in United States District Court to creating a false application for special agricultural worker status. Counsel replied by requesting a 30-day extension of time in which to locate his client. No further response was received from counsel or the applicant, and they did not respond to the subsequent notice of denial.

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.).

Counsel and the applicant were accorded the opportunity to review the derogatory evidence regarding Gilbert Rocha, and failed to respond, much less provide any favorable evidence. In fact, neither counsel nor the applicant has made any statement since the appeal was filed on April 19, 1991. Although, in other cases, Gilbert Rocha later provided a statement reiterating that he had truly supervised the alien whose application had been denied, he has not done so in this case. Nor has the applicant provided any affidavits from coworkers, or employees of non-profit organizations, who have clearly stated in other cases that they provided outreach and nursing services for the migrant workers at KCP, and named such workers. Additionally, given the fact that the applicant traveled to the United States in order to pursue an academic course of study, his claim that he performed field work for the one season that could result in a benefit in the special agricultural worker program does not seem plausible.

Under these circumstances, it is concluded that the applicant has failed to 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 decision is affirmed; the application is denied. The previous appeal is dismissed. This decision constitutes a final notice of ineligibility.