U.S. Department of Homeland Security
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Washington, DC 20529

L-4

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: AUG 0 9 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 office that originally decided 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

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DISCUSSION: The application for temporary resident status as a special agricultural worker was denied by the Director, Western Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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. This decision was 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

On appeal, the applicant reaffirms the claim of employment for listed in the original I-700 application and submitted employment documents in support of this claim. The applicant provides an explanation as to why he submitted employment documentation from a different employer in order to establish his eligibility.

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).

The applicant was admitted to the United States at Calexico, California on April 11, 1988, as an S-9 applicant who established a preliminary claim to eligibility for temporary resident status as a special agricultural worker. The applicant was admitted for a period of 90 days in accordance with 8 C.F.R. § 210.2(c)(4)(iii), and required, within that 90 day period, to submit a complete application, along with a Fingerprint Card, Form FD-258, to any legalization office. A complete application included evidence of qualifying employment, evidence of residence, a report of medical examination and the prescribed number of photographs. 8 C.F.R. § 210.1(d).

At the time of entry into the United States, the applicant's Form I-700 application listed employment for more than 90 man-days cultivating tomatoes, beets, and grapes for in Salida, California from May 1985 to May 1986. While the applicant did not list any additional agricultural employment on his Form I-700 application, he did submit original employment documents from five additional agricultural employers. Although such documentation reflects employment that occurred subsequent to the termination of the twelve-month qualifying period ending May 1, 1986, the employment records tend to establish that the applicant's occupation is that of farm worker.

When the applicant later presented the application package to the Service, the supporting documentation provided did not correspond to the claim on the I-700 application presented at the border. Specifically, the applicant submitted a Form I-705 affidavit and a separate employment affidavit, both signed by On the Form I-705 affidavi indicated that he employed the applicant for 30 man-days picking cherries at and 80 man-days cultivating apricots, grapes, sugar beets, and tomatoes at various farms in San Joaquin County, California from May 1, 1985 to May 1, 1986.

The applicant also submitted original employment documents from two additional agricultural employers including the employer listed on the original Form I-700 application. While such documentation reflects employment that occurred subsequent to the termination of the twelve-month qualifying period ending May 1, 1986, these employment records only serve to reinforce the determination that the applicant's occupation is that of farm worker.

In attempting to verify the applicant's claimed employment, the director determined that information acquired by the Service contradicted his claim. Specifically, on December 21, 1988, payroll officer for , informed the Service t had never worked fo . In addition, provided the Service with exemplars of their signatures and an exemplar o gning on behalf of her husband. The director determined that the signatures on the applicant's documents did not appear to match exemplars on file, and thus were not authentic.

In response, the applicant submitted original employment documents reflecting more that 90 man-days of agricultural employment for at various farms in May, June, October and November of 1985.

The applicant also submitted original employment documents from an additional agricultural employer. However, such documentation again reflects employment that occurred subsequent to the termination of the twelve-month qualifying period ending May 1, 1986. Nevertheless, these employment records only serve to reinforce the determination that the applicant's occupation is that of farm worker.

The director concluded the applicant had not overcome the derogatory evidence, and denied the application. However, it must be noted that in denying the application, the director failed to acknowledge, much less address the applicant's claim of employment for during the qualifying period.

On appeal, the applicant reiterates the claim of employment for by submitting photocopies of additional employment records. These photocopied records correspond to and corroborate the applicant's claim of agricultural employment for during May and June of 1985, as well as additional employment in July and September of 1985.

The inference to be drawn from the documentation shall depend on the extent of the documentation, its credibility and amenability to verification. If an applicant establishes that he has in fact performed the requisite qualifying agricultural employment by producing sufficient evidence to show the extent of that employment as a matter of just and reasonable inference, the burden then shifts to the Service to disprove the applicant's evidence by showing that the inference drawn from the evidence is not reasonable. 8 C.F.R. § 210.3(b)(1).

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... if the Service has not obtained information which would refute the applicant's evidence, the applicant satisfies the requirements for the SAW program with respect to the work eligibility criteria. *United Farm Workers (AFL-CIO) v. INS*, Civil No. S-87-1064-JFM (E.D. Cal.).

In this case, the director determined that the signatures of the applicant's supporting documents did not appear to match exemplars on file provided by . However, the signature discrepancy between the applicant's documents and the exemplars provided by is not visibly significant enough to be conclusive without forensic analysis of the signatures. While the director called into question 30 of the 110 man-days worked by the applicant because of information obtained regarding no determination was made regarding the veracity of the remaining 80 man-days the applicant claimed to have worked at various farms. The fact that the applicant has submitted a significant amount of credible and original employment records must be considered as an important factor in overcoming any negative inference noted by the director. That such employment records were never considered, yet alone addressed, during the course of these proceedings must be considered in determining the credibility of the applicant's claim of agricultural employment.

Unlike many other cases that were denied, this record contains no sworn statement, admission, record of conviction or other significant indication that would lead to a conclusion that the applicant did not work as claimed. The applicant has submitted sufficient evidence to establish as a matter of just and reasonable inference 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 eligible for adjustment to temporary resident status as a special agricultural worker.

ORDER: The appeal is sustained. The application for temporary residence as a special agricultural worker is approved.