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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

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:

[redacted]

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 applicant had been admitted to the United States as an S-9 preliminary applicant. The director denied the application because the applicant submitted employment documents which differed significantly from the claim of employment as set forth in the original I-700 application.

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 August 9, 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 indicated employment for more than 90 man-days cultivating grapes for from May 1985 to December 1985. However, when the applicant later presented the application package to the Immigration and Naturalization Service, or the Service (now Citizenship and Immigration Services, or CIS), 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 letter, both signed by controller of Services. The Form I-705 affidavit indicates that the applicant worked 106 man-days performing qualifying agricultural services for Inc., in Fresno County, California from January 6, 1986 to May 1, 1986. The applicant also submitted a photocopy of a Form W-2, Wage and Tax Statement, reflecting wages paid to the applicant by Borba Agribusiness Services in 1986.

The director determined that the applicant had severely diminished his credibility by revising his original claim of employment and denied the application on January 17, 1992.

On appeal, the applicant reiterates the claim of employment for listed in the original I-700 application. The applicant states that he recently attempted to obtain employment documentation from only to learn that he had passed away. The applicant indicates reviewed her brother's employment records and provided him with supporting documents for work performed under his own name. The applicant declares that he also utilized various aliases while working for but that would only provide documents reflecting work performed with his own name because she could neither confirm nor deny work performed utilizing aliases through her own direct personal knowledge. The applicant indicates that directed him to former foreman, to attempt to obtain employment documents from an individual with personal knowledge of the circumstances. The applicant states that he worked for different employers during the qualifying period and submitted employment documentation to the Service from the first employer who had prepared and provided him with such documentation.

The applicant provides documentation from hat tends to corroborate all aspects of the statements made on appeal. The applicant's explanation regarding why he submitted employment documentation from a different employer than that listed on the original Form I-700 applicant is found to be adequate and reasonable.

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.).

Unlike many other cases that were denied, this record contains no sworn statement, admission, record of conviction or other 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.