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

L-4

U.S. Citizenship and Immigration Services

[redacted]

AUG 0 3 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:

This is the decision of the Administrative Appeals Office in your case. All documents have 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.

Ellen C Johnson
for

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 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 relating to the applicant's claim of employment for Maria Zuniga.

On appeal, the applicant reasserts her claim of eligibility for benefits as a special agricultural worker.

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 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 to have harvested grapes for 67 man-days for farm labor contractor [redacted] from August to October 1985. In support of her claim, the applicant submitted a corresponding Form I-705 affidavit and a separate employment letter, both purportedly signed by [redacted]

The applicant also claimed to have cut okra for 24 days from July 1985 August 1985 for [redacted] She did not provide any evidence of that claimed employment. However, she furnished a letter, pay records, and an affidavit from [redacted] indicating she harvested grapes for 18 days, from May to June 1985, at [redacted]

In attempting to verify the applicant's claimed employment, the director acquired information which contradicted the applicant's claim. The director obtained a letter from [redacted] dated November 18, 1987 with an exemplar of her authentic signature and the genuine letterhead she used for the employment verification affidavits she issued. According to the director, [redacted] stated that she issued all employment letters on original printed letterheads only, never on stamped or photocopied letterhead. The documentation submitted by the applicant does not match the authentic signature and letterhead exemplars provided by [redacted]

On December 12, 1991 the applicant was advised in writing of the adverse information, and of the director's intent to deny the application. The applicant was granted thirty days to respond.

In her letter of response, the applicant stated that she had made numerous attempts to get in touch with [redacted] however [redacted] had not returned her calls. The applicant indicated that she found the director's findings unusual, as she received the verification letter directly from [redacted] assistants. She stated that she understood from the assistants that [redacted] was not the only member of her family who signed verification letters. She reiterated that she had worked for [redacted] as claimed.

The applicant also stated that she worked for in 1986. She pointed out that she had referenced this on her application, but had not provided evidence because she could not get in touch with the ior to filing her application. She enclosed a Form I-705 affidavit from stating she worked 81 days from January 3 to April 25, 1986.

The director concluded the applicant had not overcome the derogatory evidence and denied the application. On appeal, the applicant accurately states that the director provided her with a generalized response in a form letter that does not individually address the explanation she had provided. She maintains that her claims should be considered credible because they all were made initially in this process. She again mentions that she had tried to talk to without success.

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 director has not challenged the claim of 18 days work at Farms, which is well-supported by evidence. Concerning the claim, the employment letter submitted by the applicant is not the type that confirmed as genuine, according to the director. However, there is no actual statement from her indicating that the type the applicant submitted is fraudulent. The applicant has consistently claimed that she acquired the letter directly from s assistants. If an applicant were inclined to forge ignature on an affidavit, or acquire a forged affidavit, it would not seem likely that the affidavit would show less than the required 90 days of work, as this one does. Furthermore, the applicant also submitted a Form I-705 affidavit purportedly from

Regarding the Leon claim, the applicant did show on her application that she worked for them. However, on her application she showed that she worked for them from July to August 1985. The affidavit submitted on rebuttal to the notice of intent to deny shows that she worked for them from January to April 1986. The director did not specifically address this discrepancy. It is possible that the applicant was just focusing on 1985 when she completed her application. The director did not attempt to contact and confirm or disprove the claim.

There are factors present which suggest that the applicant's claims may be valid. Unlike many applicants, the applicant did not simply wait until after receiving a notice of intent to deny before making another claim of eligibility. Either on her application, or with it, she made three claims. The Peters claim, for 18 days, has been accepted. Although there is adverse information regarding the 67-day claim, the applicant insists the information is not valid. There is no actual adverse information regarding the 81-day Leon claim.

As stated above, an alien has the burden of proving eligibility by a *preponderance of evidence*. While the applicant's evidence in this matter may not meet a higher standard such as *clear and convincing*, it is concluded that she has established, by a preponderance of evidence, that she engaged in qualifying employment for at least 90 days during the requisite period.

ORDER: The appeal is sustained.