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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: MAR 16 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 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 District Director, San Francisco, California. It was reopened by the Director, Western Regional Processing Facility, and denied again by the Director, Western Service Center. The appeal is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

In both decisions, the directors denied the application because the applicant admitted during her legalization interview that she had not performed at least 90 man-days of qualifying agricultural employment during the statutory period, as originally claimed.

On appeal of the district director's initial decision, the applicant reaffirmed her original employment claim, and asserted that the denial of her application was the result of a linguistic misunderstanding on the part of the officer conducting her legalization interview.

The applicant did not respond to the center director's subsequent decision.

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, provided she is otherwise admissible under section 210(c) of the Act and is not ineligible under 8 C.F.R. 210.3(d).

On the Form I-700 application, the applicant claimed to have picked fruit for 115 man-days from May 1985 to September 1985 for employe[redacted]t various ranches in Kern County, California. In support of the claim, the applicant submitted a corresponding Form I-705 affidavit signed by[redacted]

Subsequently, during her legalization interview, the applicant admitted to the examining officer under oath that she had never worked fo[redacted] during the qualifying period, and that it had been her father who had actually performed the work claimed by the applicant. The applicant further acknowledged that the employment verification affidavit had been provided by her claimed employer, M[redacted] in an effort to assist the applicant in obtaining benefits as a special agricultural worker.

Accordingly, on September 12, 1988, the District Director, San Francisco, California, denied the application based on the diminished credibility of the applicant's documentation due to her statement at the time of her legalization interview.

On appeal from this denial, the applicant reaffirmed her original employment claim, and asserted that the denial of her application was the result of a linguistic misunderstanding on the part of the officer conducting her legalization interview.

Subsequently, on February 5, 1991, the Director, Western Regional Processing Facility, withdrew the district director's prior decision and reopened the case. The facility director also attempted to contact the applicant's employer in order to obtain further information regarding the applicant's employment claim. However, the director's attempt to contact the applicant's purported employer was not successful and the correspondence was later returned by the Postal Service as undeliverable.

On the same date, February 5, 1991, the Director, Western Service Center issued a notice of intent to deny which set forth the applicant's acknowledgement during her legalization interview that she had not performed qualifying agricultural employment as originally claimed. The applicant was granted thirty days in which to respond. However, although the notice of intent was sent to the applicant's most current address of record, it was returned by the U.S. Postal Service as undeliverable.

An applicant raises serious questions of credibility when she admits to having provided false information or fraudulent documentation in the application process. An inference cannot be drawn that the information or documentation is accurate simply because the applicant subsequently recants her admission.

Even in cases where the burden of proof is upon the government, such as in deportation proceedings, a previous sworn statement voluntarily made by an alien is admissible, and is not in violation of due process or fair hearing. Matter of Pang, 11 I&N Dec. 213 (BIA 1965). Furthermore, in the absence of exceptional circumstances, a challenge to the voluntariness of an admission or confession will not be entertained when first made on appeal. Matter of Stapleton, 15 I&N Dec. 469 (BIA 1975).

The applicant, in responding to the district director's denial, retracted her admission during her legalization interview of not having performed qualifying agricultural employment as originally claimed, instead attributing her statement to a purported misunderstanding on the part of the interviewing officer. Subsequently, however, the applicant has failed to respond to the notice of intent to deny or to the notice of decision, and in fact has made no statement since 1988. Nor, with the exception of her alleged employer's having signed the applicant's Form I-694 Notice of Appeal below her appeal statement, has the applicant submitted any additional independent, corroborative evidence in support of her claim.

Accordingly, the employment documentation furnished by the applicant in support of her application cannot be deemed credible. Under these circumstances, it cannot be concluded the applicant has credibly established that she performed at least 90 man-days of qualifying agricultural employment during the statutory period ending May 1, 1986. Consequently, the applicant has not demonstrated her eligibility for temporary resident status as a special agricultural worker.

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