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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: NEBRASKA SERVICE CENTER Date:

IN RE: Applicant: [redacted]

MAY 13 2004

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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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.

PUBLIC COPY

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 [redacted] KCP).

On appeal to the initial denial the applicant provided the same form-letter statement that many other aliens did who had claimed to have worked for [redacted] during the qualifying period. He stated that the director had not given him the time that he had requested to respond to the letter that described the adverse information. He referred to 52 photocopied affidavits that he was submitting.

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 claimed on his application that he had engaged in 130 man-days of qualifying agricultural employment for KCP from May to October 1985. In support of the agricultural claim, the applicant submitted a corresponding affidavit from [redacted] who indicated he was a crew leader at KCP. The applicant provided no indication that he ever worked in agriculture other than during the period required to qualify for temporary resident status.

The applicant was then interviewed by an officer of the Immigration and Naturalization Service regarding the application. The officer recommended that the application be denied.

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 Gilbert Rocha 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 20, 1990, the applicant was advised in writing of the derogatory evidence obtained by the director, and of the director's intent to deny the application. The applicant was granted thirty days to respond. He requested that he be granted an extension of time, until February 20, 1991, to furnish additional evidence. Although the director did not respond, he waited until March 22, 1991 to take further action. On that date he noted that the applicant had not responded further, and therefore had not overcome the derogatory evidence, and denied the application.

The applicant provided the 52 photocopied affidavits on appeal, along with his form-letter statement. 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.

in United States District Court to creating a false application for special agricultural worker status. The applicant failed to respond to this notice and 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.).

The applicant was accorded the opportunity to review the derogatory evidence regarding [redacted] and failed to respond, much less provide any favorable evidence. In fact, the applicant has not made any statement since the appeal was filed on April 2, 1991. Even in his appellate statement the applicant failed to state that he worked for [redacted] he simply referred to the attached 52 affidavits. *None of those affiants stated the applicant worked for Gilbert Rocha.* Although [redacted] in other cases, 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.

The applicant has also not provided any affidavits from 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.

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.