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

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: MAY 17 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 service center that processed your case. If your appeal was sustained, or if the matter 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 Director, Northern Regional Processing Facility. The matter was remanded by the Director, 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 KCP).

On appeal of the first decision, the applicant filed a form-letter appeal, as many KCP applicants did, and incorrectly stated that he had requested more time to respond to the notice of intent to deny. He reiterated that he had worked for t KCP.

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 120 man-days of qualifying agricultural employment for KCP from May to October 1985. In support of that claim he submitted two corresponding affidavits from crew leader The applicant provided no indication that he ever worked in agriculture other than during the period required to qualify for temporary resident status. In fact, he showed on his application that he lived in Mexico City for almost three years before entering the United States in 1988 to file this application. Additionally, all indications are that he has lived in Chicago since then.

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 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 19, 1990, the applicant was advised in writing of the adverse information obtained by the director, and of the director's intent to deny the application. The applicant was granted thirty days to respond. He did by stating that he sought out who purportedly stated he was thinking of suing the farm owner for failing to recognize that he had worked there. According to the applicant, Mr. did not want to provide any new proof for any applicants until after his lawsuit had been decided. The applicant provided an affidavit from another employer, reflecting employment in California from November 1985 to March 1986. The applicant explained that he had not acquired this affidavit in time to present it with his application.

The director concluded the applicant had not overcome the derogatory evidence, and denied the application. On appeal, the applicant provided, as did many other applicants, photocopies of 51 identically-worded form-

letter affidavits from aliens who stated they had worked for Gilbert Rocha at KCP. The applicant also included his own affidavit.

The Legalization Appeals Unit remanded the matter on November 1 1993, finding that some of the director's conclusions had not been adequately documented in the record.

On January 21, 1997 the applicant requested a copy of the record of proceedings. A week later, the center director complied with the request.

The center director wrote to counsel on February 2, 1998 and provided her with an extensive package of documents concerning the KCP investigation, including evidence that pled guilty in United States District Court to creating a false application for special agricultural worker status. Neither counsel nor the applicant responded to this notice, or to 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 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 19, 1991. Although 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. Nor has the applicant 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. Finally, it is noted that none of the 51 affiants who provided statements on appeal actually stated that *this applicant* had worked for at KCP.

Regarding the claim to have worked for in California, the facility director correctly pointed out that the applicant had shown on his application that he lived in Mexico City during that period. His claim to have worked for cannot be viewed as credible.

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.