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

U.S. Citizenship and Immigration Services

[redacted]

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FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: MAY 19 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]

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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.

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Robert P. Wiemann, Director
Administrative Appeals Office

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 dismissed.

The director denied the application because the applicant failed to establish that he performed at least 90 man-days of qualifying agricultural employment during the eligibility period. This decision was based on adverse information acquired by the Service relating to the applicant's claim of employment for at Ram/Son Contractors.

On appeal, the applicant reaffirmed her claim to have performed qualifying agricultural employment for and requests additional time in which to obtain additional evidence in support of her claim. As of this date, however, no further documentation has been submitted into the record.

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 he is otherwise admissible under section 210(c) of the Act and is not ineligible under 8 C.F.R. 210.3(d). 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 performed a total of 93 man-days of qualifying agricultural employment for at Ram/Son Contractors from May 1985 to August 1985. In support of the claim, the applicant submitted a corresponding Form I-705 affidavit and a notarized letter of employment, both signed by who identified himself as the applicant's *foreman* at Ram/Son Contractors. Mr specified that the applicant worked 48 man-days from May 1985 to June 1985, and 45 man-days from September 1985 to December 1985.

In attempting to verify the applicant's claimed employment, the Immigration and Naturalization Service or the Service (now, Citizenship and Immigration Services or CIS) acquired information which contradicted the applicant's claim. Specifically, Daniel C. Ramirez of Ram/Son Contractors stated that Juan Lemus worked as a foreman for a total of only *twenty-six days* during the months of October and November of 1985. Furthermore, Alma Castellanos, bookkeeper for Ram/Son Contractors, stated that their business ended on December 31, 1985 and that no one but herself actually worked in the month of December.

On February 18, 1992, the applicant was advised in writing of the adverse information obtained by the Service, and of the Service's intent to deny the application. The applicant was granted thirty days to respond. In response to the Service's notice, the applicant's representative sent a written communication to the Service. In his communication, the representative indicated he had advised the applicant to locate former co-workers who could support her employment claim, and also attempt to obtain records of additional qualifying agricultural field work that she may have performed for other employers. Neither the applicant nor her representative attempted to rebut the specific derogatory information communicated by the director in his notice of intent.

On March 31, 1992, the director concluded that the applicant had failed to overcome the adverse evidence, and denied the application.

On appeal, the applicant reaffirmed her claim to have performed qualifying agricultural employment for Juan Lemus. In addition, the applicant asserted that she was paid in cash due to her undocumented status. The applicant further asserted that it was not unusual for labor contractors to subsequently deny having employed undocumented workers due to fear of investigation by state and federal authorities, and suggested this as motivating her employers to deny her employment. However, this statement by the applicant amounts to mere conjecture and speculation which is unsupported by any additional independent, corroborative evidence.

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 claimed on her application and supporting documentation to have performed at least 93 man-days during the twelve-month qualifying period ending May 1, 1986. According to officials of Ram/Son Contractors, however, the applicant's purported employer [redacted] worked as a foreman for only *26 days* during the qualifying period. The applicant has not overcome this derogatory information which directly contradicts her employment claim.

The applicant has, therefore, failed to credibly 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 appeal is dismissed. This decision constitutes a final notice of ineligibility.