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

U.S. Citizenship and Immigration Services

[redacted]

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FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: MAY 21 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

prevent clearly unwarranted
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, 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 Kansas City Produce (KCP).

On appeal of the first decision, the applicant provided the same form-letter statement that many aliens did who had claimed to have worked for t KCP. The applicant incorrectly stated that the facility director has not given him the additional time that he had requested to respond to the notice of adverse information. As did many other aliens on appeal, the applicant provided 4 photocopied affidavits from individuals stating they had worked fo during the qualifying period.

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 140 man-days of qualifying agricultural employment for KCP from May to November 1985. He provided no indication that he ever worked in agriculture other than during the period required to qualify for temporary resident status. In fact, the record reveals he worked in restaurants subsequent to the 1985-86 period.

In support of the agricultural claim, the applicant submitted a corresponding affidavit from who indicated he was a crew leader at KCP.

The applicant was then interviewed by an officer of the Immigration and Naturalization Service regarding his application. The officer indicated in her notes that she was very suspicious of the claim, and 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 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 12, 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 given until January 11, 1991 to respond. On January 28, the director received a request from the applicant that he be granted more time, until March or April, to respond further. In a notice dated March 11, the director granted an additional 18 days, to March 29.

The applicant failed to make any further statement, or provide any additional documentation. The director concluded the applicant had not overcome the derogatory evidence, and denied the application on June 10, 1991.

On October 6, 1993 the Legalization Appeals Unit remanded the matter, finding that some of the facility director's conclusions had not been adequately documented in the record. The center director later supplemented the record with evidence that Gilbert Rocha pled guilty in United States District Court to creating a false application for special agricultural worker status. That director subsequently denied the application.

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 has not made any statement since the appeal was filed on April 19, 1991. Although [redacted] 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. The four photocopied affidavits submitted on appeal each state that the affiant worked for [redacted] at KCP. The affiants do not indicate that the applicant worked there.

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.