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U.S. Citizenship
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Services

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MAY 25 2004

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

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 originally denied by the Director, Western Service Center, and remanded by the Legalization Appeals Unit or LAU (now, the Administrative Appeals Office or AAO). The matter was subsequently reopened and denied again by the California Service Center, and is now before the AAO on appeal. The appeal will be dismissed.

In both decisions, the directors denied the application as a result of adverse evidence acquired by the Immigration and Naturalization Service or the Service (now, Citizenship and Immigration Services or CIS) which contradicted the applicant's claim of employment for

On appeal from the initial decision, the applicant reaffirmed his eligibility for temporary residence as a special agricultural worker, and asserted that the director's decision denying his application was erroneous.

On appeal from the subsequent decision, the applicant provided additional evidence in support of his claim.

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 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).

On the Form I-700 application, the applicant claimed to have performed 90 man-days of qualifying agricultural employment at the Don Deleonardis farm in Tulare County, California, from May 1985 to August 1985.

In support of his claim, the applicant submitted a Form I-705 affidavit signed by who is designated as "farm labor contractor." indicated that the applicant worked with peaches, plums, nectarines, grapes, oranges, lemons, and olives at the Don Deleonardis farm. further indicated on the affidavit that the applicant was "paid with cash."

In attempting to verify the applicant's claimed employment, the Service acquired information which contradicted the applicant's claim. Specifically, the Service was informed by that the applicant's purported former employer , was never employed by s a farm labor contractor, and that ever hired any farm labor contractors. According to was employed by him during 1985 and 1986 as a foreman, but had no access to payroll records. further indicated that all employees were paid by check, not in cash, as indicated on the applicant's documents.

The applicant was further advised that the signature of his purported employer on his supporting documentation did not match the exemplars which had provided to the Service.

On June 18, 1991, 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. The

record contains no response from the applicant to the Service's notice. On September 4, 1991, the director concluded the applicant had not overcome the derogatory evidence, and denied the application.

On appeal from this decision, the applicant requested a copy of his complete legalization file. According to the record, the Service subsequently complied with the applicant's request on September 18, 1997.

On November 14, 1994, subsequent to the applicant's appeal, the Legalization Appeals Unit (LAU) remanded the case because the adverse evidence upon which the director's finding was based included contradictory information that did not support a decision of denial. Specifically, the LAU noted that, regardless of the fact that [redacted] considered [redacted] be a foreman, as opposed to a farm labor contractor, Mr. [redacted] did supervise employees at t[redacted] farm and would, therefore, have had personal knowledge of the specifics of their employment. In addition, the LAU pointed out that [redacted] actual statement does not support the director's finding that all of [redacted] employees were paid by check. Furthermore, the discrepancy cited by the director between the signatures of [redacted] on the applicant's documentation and the exemplars in the possession of the Service was deemed by the LAU to be minimal, and it did not appear that a determination could be made without forensic analysis of these signatures.

The LAU, in its remand order, also determined that a review of the record disclosed additional adverse evidence of which the applicant had not been advised, and that the applicant should be apprised of this additional evidence and provided with an opportunity to address and rebut the information.

Subsequent to the LAU's remand order, the applicant submitted a personal statement, in which he reaffirmed his claimed employment for [redacted] at the Deleonardis farm. The applicant also asserted that any questionable activities in which [redacted] may have been involved should, in any case, have no impact upon his employment claim. In addition, the applicant submitted a photocopied I-705 affidavit and separate employment affidavit, both of which are signed by [redacted], who is designated as foreman for Roscoe Scott Farm Labor Contractors. According to [redacted] the applicant performed a total of 95 man-days of qualifying agricultural employment for [redacted] Farm Labor Contractors in Fresno, California, from May 1, 1985 to May 1, 1986.

On November 17, 1997, the case was reopened by the Director, California Service Center, the previous decision of September 4, 1991 was withdrawn, and the applicant was issued a new Notice of Intent to Deny. In its subsequent notice of intent, the Service informed the applicant that on June 13, 1989, the applicant's purported employer, [redacted] completed a U.S.I.N.S. Farm Survey Form, in which he specified that his workers had been paid *by check*, and that his employees were provided with a W-2 Wage and Tax Statement in addition to the affidavit Form I-705. However, the applicant's documentation did not include a W-2 Form, and the applicant's I-705 affidavit from [redacted] had indicated the applicant was paid in *cash*.

The director also referenced the applicant's subsequent claim to have performed qualifying agricultural employment for [redacted] Contractor, noting that the applicant's

attempt to advance a revised employment claim for a different employer at this point in the application process severely diminishes the credibility of his claim and documentation. For this reason, the director rejected the applicant's new claim of employment for

The applicant was granted thirty days to respond to the Service's subsequent notice of intent. However, the record contains no response from the applicant to this notice. On February 9, 1998, the director concluded the evidence submitted by the applicant in support of his employment claim lacked credibility and issued a subsequent denial of the application.

Subsequent to the second decision of denial, the applicant submitted another personal statement, in which he requested that his case be reopened. The applicant also submitted an I-705 affidavit and corresponding employment statement from yet another purported employer who attests to the applicant having performed a total of 95 man-days working with onions and bell peppers from May 1, 1985 to May 1, 1986.

Once again, the applicant has raised serious questions of credibility by asserting an entirely new claim to eligibility which had not initially put forth on his original I-700 application. The applicant's claim to have been employed by was not brought to the Service's attention until after his application was denied for a second time due to credibility issues arising from derogatory information impacting adversely on the applicant's initial employment claim for as well as the applicant's new claim of employment for As such, this new claim of employment for will *not* serve to fulfill the qualification requirements necessary for status as a special agricultural worker.

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 owner of the farm where the applicant claimed to have worked, stated that his employees were "paid exclusively by check." However, indicated on his Form I-705 affidavit that the applicant was paid *in cash*. The applicant does not resolve this significant discrepancy regarding this employment claim. Furthermore, it is noted that the applicant claimed to have worked with nectarines, peaches, and lemons on the Don Deleonardis farm. However, on January 11, 1991, specified that he did *not* grow these crops on his farm.

The derogatory information obtained by the Service regarding directly contradicts the applicant's claim. The applicant has not overcome such derogatory evidence. The negative finding of the interviewing officer regarding the applicant's overall credibility should also be taken into consideration. Therefore, the documentary evidence submitted by the applicant cannot be considered as having any probative value or evidentiary weight.

The applicant has 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.