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

U.S. Citizenship and Immigration Services

L4

[redacted]

MAY 28 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 and subsequently reopened by the Director, Western Regional Processing Facility. The case was denied again by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

In both decisions, the directors denied the application because the applicant failed to establish that he performed at least 90 man-days of qualifying agricultural employment during the twelve-month eligibility period ending May 1, 1986. The decisions were based on adverse information acquired by the Immigration and Naturalization Service or the Service (now, Citizenship and Immigration Services or CIS) relating to the applicant's claim of employment fo

On appeal of the facility director's decision, the applicant asserted that he had never received the director's Notice of Decision, and requested that the Immigration and Naturalization Service or the Service (now, Citizenship and Immigration Services or CIS) re-mail to the applicant copies of the decisional notice. The record indicates that, on August 25, 1992, the Service complied with the applicant's request.

The applicant did not respond to the center director's subsequent decision.

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). 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 application, Form I 700, the applicant claimed to have performed the following employment for labor contractor

(1) 90 man-days thinning and weeding sugar beets for Ramirez & Son in Imperial, California, from September 1985 to December 1985; and

(2) 72 man-days cutting asparagus at Signal Produce in Imperial, California, from January 1986 to March 1986.

In support of the claim, the applicant submitted a corresponding Form I-705 affidavit and separate employment affidavit, both purportedly signed by

In the course of attempting to verify the applicant's claimed employment, the Service acquired information which contradicted the applicant's claim. On July 20, 1988, the applicant's purported supervisor, executed a sworn statement in the presence of Service officers in which he admitted that he *never* worked for Ramirez & Son, and that he was only employed by Signal Produce for a total of *24 man- days during March 1986*. On August 9, 1988, this information was communicated to the applicant by the director in his decision denying his application.

Subsequently, on February 21, 1989, the facility director set aside his previous decision and reopened the case for procedural reasons as the applicant had not been advised of any derogatory evidence prior to the issuance of the decision.

On May 26, 1992, the applicant submitted an I-694 Notice of Appeal, in which he responded to the facility director's decision of August 9, 1988. On appeal, the applicant submitted a separate personal statement in which he cited the case of *United Farm Workers (AFL-CIO) v. INS*, Civil No. S-87-1064-JFM (E.D. Cal). This case concerns primarily the *type* of documentation that can be used to establish an agricultural laborer's *prima facie* claim to employment. However, the central issue in the *present* case is not the quantity of the documentation submitted by the applicant but rather its *credibility*. As stated in the regulations, *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). The burden of proof is, therefore, on the applicant until he has submitted documentation which is both credible and amenable to verification.

The applicant, in his appellate statement, also advanced the argument that he had met his burden of proof by showing that the claimed employment occurred through a just and reasonable inference from the documentation submitted, and that the burden has shifted to the Service. However, the question of whether the applicant has met his initial burden of proof is not at issue, but rather the issue is whether the applicant has met his secondary burden of proof regarding the overcoming of the adverse information relative to his case. Upon a showing that the claimed employment occurred through a just and reasonable inference of the evidence submitted, the burden shifts to the Service to disprove the applicant's evidence by showing that the inference drawn from the evidence is not reasonable. 8 C.F.R. § 210.3(b). Upon a showing that the inference from the applicant's evidence is not reasonable, the burden of proof then shifts to the applicant to overcome the adverse information. The adverse information in this applicant's case, however, clearly negated any inference from the original evidence that the claimed employment occurred. Consequently, at that point, the burden of proof shifted back to the applicant, who must thereafter submit sufficient credible evidence to meet his secondary burden of proof of overcoming the adverse information obtained by the Service.

The applicant, on appeal, also submitted a Form I-705 and a separate affidavit signed by [redacted] who indicated the applicant peformed 95 man-days thinning and weeding cantaloupes, sugar beets and lettuce at Zamudios Agriculture in Imperial County, California, from August 1985 to December 1985. On the I-705, Mr. [redacted] designated as "foreman." However, an applicant raises serious questions of credibility when asserting an entirely new claim to eligibility which was not initially put forth on the application. In such instances, the Service may require credible evidence to support the new claim as well as a complete plausible explanation concerning the applicant's failure to advance this claim initially.

The applicant's claim to have been employed by [redacted] was not brought to the Service's attention until he filed his appeal from the director's decision denying his application. At the time of filing, the applicant did not reference this employment on the Form I-700 application or on the occasion of his legalization interview. Nor did he submit corroborating materials to document the alleged employment with Mr. [redacted] In his separate statement on appeal, the applicant asserted that he was never asked at the time of his legalization interview whether or not he worked for more than one employer, and that he had been prepared to provide this information regarding his additional employment for Mr [redacted] if it had been

solicited on that occasion. However, this statement from the applicant is wholly without merit or substance. The Service is under *no* obligation to solicit additional claims from an applicant who has chosen to withhold that information from his application Form I-700. Moreover, the very purpose of the Form I-700 application is to allow the applicant to claim the *all* of the qualifying agricultural employment which entitles him to the benefits of status as a special agricultural worker. In fact, the instructions accompanying the I-700 application do not suggest that an applicant limit his claim; on the contrary, they encourage him to list *multiple* claims as they instruct him to show the most recent employment first.

Finally, larger issues of credibility arise when an applicant claims employment which is called into question through a Service investigation, and later attempts to establish eligibility with a different employer, heretofore never mentioned to the Service. The applicant's advancement of a new employment claim does not address, resolve, or diminish the credibility issues raised by the adverse evidence as regards the applicant's initial employment claim for Therefore, the applicant's overall credibility remains in question. For this reason, the applicant's new claim of employment for will *not* serve to fulfill the qualification requirements necessary for status as a special agricultural worker.

On January 22, 1997, subsequent to the applicant's appeal, the Legalization Appeals Unit or LAU (now, the AAO) remanded the case for further consideration and action because the director's communication of February 21, 1989 reopening the case and withdrawing his prior decision of August 9, 1988 was not followed by the issuance of a new decision addressing the evidence presented.

Subsequently, on September 18, 2001, the Director, California Service Center, issued a new decision denying the application based on the adverse evidence communicated in the facility director's previous decision of August 9, 1988. In his decision, the center director also denied the applicant's subsequent employment claim, on appeal, for due to questions of credibility concerning the applicant's assertion of an entirely new claim to eligibility which had not initially been put forth on his I-700 application.

The applicant did not respond to the center director's subsequent decision.

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)*, Civil No. S-87-1064-JFM (E.D. Cal.).

The fact that the applicant's purported employer, admitted he *never* worked for Ramirez & Son and that he was only employed by Signal Produce for *24 man days* during March 1986 directly contradicts the

applicant's claim to have performed a total of 162 man-days for Mr. from September 1985 to March 1986. The applicant has failed to overcome this adverse evidence. As such, the applicant's claim and supporting evidence cannot be considered as credible or having any probative or evidentiary value.

The applicant has, therefore, failed to credibly establish the performance of at least 90 man days of qualifying agricultural employment during the twelve month 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.