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U.S. Department of Homeland Security
20 Massachusetts Ave. NW, Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

L 41

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

IN RE: Applicant: [redacted] MAR 31 2005

PETITION: 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. All documents have been returned to the office that originally decided 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 (SAW) was denied by the Director, Western Service Center. A subsequent appeal was remanded by the Legalization Appeals Unit, now the Administrative Appeals Office (AAO). The application was denied again by the Director, California Service Center. The matter is before the AAO on appeal. The appeal will be dismissed.

In both decisions of denial, the director 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 evidence adverse to the applicant's claim of employment for Fred and Anna Wickersham.

Although the applicant did not respond to the more recent decision of denial, his appeal taken from the previous decision of denial is still in effect. In that appeal, the applicant reiterated his claim of employment for the Wickershams. The applicant requested a copy of his file through the Freedom of Information Act (FOIA). The Service complied with the request on March 10, 1993.

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 application, Form I-700, the applicant claimed to have performed 93 man-days of qualifying agricultural work for [redacted] in Clackamas County, Oregon, from May 15, 1985 to May 1, 1986. He claimed no other employment.

In support of the claim, the applicant submitted a corresponding Form I-705 affidavit and an employment letter, both purportedly signed by [redacted]

In attempting to verify the applicant's claimed employment, the Service acquired information which contradicted the applicant's claim. In the United States District Court for the District of Oregon, [redacted] pled guilty to conspiracy to falsify and sell thousands of affidavits attesting to employment on his farm. As part of his plea agreement, [redacted] gave sworn statements in which they provided, based on their records and memory, a list of 31 names of individuals who did <u>in fact</u> actually perform at least 90 man-days of qualifying agricultural employment for them. They also provided another list of 101 names of individuals (again based on their memory and records) they <u>believed</u> worked for them, but for less than 90 days. The applicant's name does not appear on either list. Both Wickershams also stated that they have no other records, documentation or personal recollection which would support <u>any</u> other Form I-705 affidavit. Several thousand aliens are known to have filed applications claiming to have performed 90 or more man-days of employment for the Wickershams.

On February 26, 1991, in a Notice of Intent to Deny, the Director, Western Service Center, informed the applicant of the adverse evidence in possession of the Service and of the Service's intent to deny the application. The applicant was accorded 30 days to respond to that evidence. In response, the applicant requested a copy of his file. The applicant did not submit any additional evidence.

The Director, Western Service Center, found that the applicant had not overcome the adverse evidence and denied the application on January 17, 1992. The applicant appealed that decision and the application was

subsequently reopened, and on November 4, 2004, the director again denied the application. The applicant did not respond to the second denial of his 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).

No specific type of documentation is required to sustain the applicant's burden of proof. However, the documentation must be credible. Documents which appear to have been forged, or otherwise deceitfully created or obtained, are not credible. United Farm Workers (AFL-CIO) v. INS, Civil No. S-87-1064-JFM (E.D. Cal.).

While the applicant reiterates his employment claim for the Wickershams on appeal, he has provided no documentation whatsoever to rebut the adverse evidence. In light of that, the guilty plea of [redacted] the absence of the applicant's name on the lists, and the massive number of applicants who all claimed to have worked for the Wickershams at the same time, we find the applicant has failed to establish the performance of at least 90 days of employment for the Wickershams.

The applicant has failed to establish credibly 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.