identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

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

U.S. Citizenship and Immigration Services

26

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: MAR 01 2003

IN RE: Applicant: [redacted]

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: SELF-REPRESENTED

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 (LAU), 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

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 stated that all his documentation was authentic.

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 packed fruit for for 96 man-days, from May 6, 1985 to September 1, 1985 at Rio Bravo.

In support of the claim, the applicant submitted a corresponding Form I-705 affidavit and a separate form employment verification letter, both of which were purportedly signed by farm labor contractor On the Form I-705, which the applicant also signed, in the space labeled "Name of Farm," the name was entered. Both of those documents specify that the applicant was employed by from May 6, 1985 to September 1, 1985.

On August 2, 1991, in a Notice of Intent to Deny, the Director, Western Service Center, noted that the Service possessed evidence adverse to the applicant's employment claim. Specifically, the notice stated that the purported signatures of Jesus Camacho on the applicant's employment documentation did not appear to match the known authentic signatures of on exemplars in the possession of the Service. The applicant was accorded 30 days to respond to that evidence.

In response, the applicant stated that as soon as he received the notice of intent to deny he went to Bakersfield, California to find but that he could not find him. The applicant reasserted the validity of the documentation that he had submitted.

The Director, Western Service Center, found that the applicant had not overcome the adverse evidence and denied the application. On appeal, the applicant submitted an affidavit from who asserted that he used to go and visit the applicant at n Kern County California. The affiant stated that the applicant was an agricultural worker.

On March 19, 1996, the AAO remanded the case noting that the signature discrepancy relied upon in denying the application was an insufficient basis for the denial of the application. The director was advised that, if he had additional adverse evidence pertaining to the applicant's claimed employment, such evidence should be entered in to the record and that the applicant be advised thereof.

On August 16, 1999, in a Notice of Intent to Deny, the Director, California Service Center, noted that the applicant stated, in his application, that he worked for for 96 man-days.

The notice noted that stated in a letter dated November 5, 1993, that he did employ as a farm labor contractor, but for only 77 days from May 1, 1985 to January 15, 1986. The notice further noted that provided CIS with the names of those individuals to whom he issued Form I-705 affidavits and that the applicant's name was not on that list.

The applicant was accorded 30 days to respond to that notice, but did not respond. On September 18, 2001, the Director, California Service Center, denied the application. No further information or documentation has been received from the applicant, or from anyone acting on his behalf. During the ensuing two and one half years from the date of the second denial, the applicant has not submitted any statements or documentation to challenge the more recent decision of denial.

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.).

The applicant and have claimed that the applicant worked 96 man-days under the supervision of at the However, officials at Nickel Enterprises have indicated that only worked a total of 77 man-days at Rio Bravo. Further, the applicant was not named by Mr. as one of the individuals to whom he issued a Form I-705 affidavit. The applicant has seriously impaired his credibility by maintaining the validity of his documentation in light of the aforementioned.

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.