U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: JUN 06 2007

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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. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for temporary resident status as a special agricultural worker was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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. This decision was based on adverse information acquired by the legacy Immigration and Naturalization Service (INS) relating to the applicant's claim of employment for [redacted] at [redacted]

On appeal, the applicant submits affidavits from his sister and wife attesting to his agricultural employment during the twelve-month eligibility period ending May 1, 1986.

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).

On the Form I-700 application, the applicant claimed to have worked 96 man-days laboring in lettuce for [redacted] at [redacted] from September 1985 to March 1986. The I-700 application was prepared by the office of [redacted] In support of the claim, the applicant submitted a Form I-705 affidavit and a man-days breakdown, both signed by [redacted], who claimed to be [redacted]s' bookkeeper.

In attempting to verify the applicant's claimed employment, the legacy INS acquired information which contradicted the applicant's claim [redacted], executed a sworn statement before a Service officer on June 6, 1990. [redacted] admitted in this statement that "my records showed that no one worked for me for ninety (90) days or more during the amnesty qualifying period in 1985 and 1986." [redacted] indicated he had pled guilty to charges of Conspiracy and Creating and Supplying a False Writing and Document for use in making an Application for Adjustment of Status as a Special Agricultural Worker. [redacted] also indicated that in April 1988, he and [redacted]z were indicted by the Federal Grand Jury in Phoenix, Arizona for Conspiracy to Create False Applications for Adjustment of Status and false statement.

On December 5, 2006, the applicant was advised in writing of the adverse information obtained by the legacy INS, and of its intent to deny the application. The applicant was granted thirty days to respond. The applicant, however, failed to submit a response. The director concluded the applicant had not overcome the derogatory evidence, and denied the application on February 12, 2007.

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.).
On appeal, the applicant submits an affidavit from his wife, who asserts that in September 1985, the applicant informed her that he would be going to Arizona to work in the agricultural fields. The applicant asserts that in her

conversation with the applicant, he mentioned "he would be cultivating, cutting, and collecting lettuce. I recall that during that time he worked as many days and as many hours as he could in order to save money for our future."

The applicant also submits an affidavit from his sister, [redacted] who also stated that in September 1985, the applicant informed her that he would be moving to Arizona to work in the agricultural fields. The affiant asserts, "I had sporadic conversations with my brother during 1985 and 1986. My brother shared with me that he was working in the lettuce fields and was cutting lettuce."

The affidavits, however, raises questions to their authenticity as they contradict the applicant's claim. Specifically, [redacted] indicates that the applicant resided with her in Santa Ana, California from February 1985 to September 1985 and in late 1986, and the spouse indicates that the applicant returned to Santa Ana in November 1986. The applicant, however, claimed on his Form I-700 to have resided in Mexico from 1983 to August 1985, and resided in Santa Ana from April 1986. Furthermore, as neither affiant was a co-worker, their affidavits are of limited value and will not serve to establish the applicant's claim to eligibility.

[redacted] the applicant's purported employer, has pled guilty to document fraud charges and admitted that no one worked for him for the minimum of 90 man-days. The applicant has not overcome this derogatory evidence which directly contradicts his claim. Therefore, the documentary evidence submitted by the applicant cannot be considered as having any probative value or evidentiary weight.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd.* 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The applicant has a prior A-file ([redacted], which indicates that a removal hearing was held on February 26, 1998, and he was granted voluntary departure from the United States on or before May 26, 1998. The applicant appealed the immigration judge's decision to the Board of Immigration Appeals. In his brief, counsel for the applicant indicated that the applicant's "first employment was at the Rheem stove factory for about two years."

The prior A-file also contains a transcript of the testimony of record that occurred during deportation proceedings on February 26, 1998. A review of the transcript indicated the applicant informed the immigration judge that he entered the United States in 1985 and had continuously resided in Santa Ana, California since his entry. The applicant also informed the immigration judge that his first job in the United States was for two years at "Rhems factory."

This information coupled with the adverse evidence regarding his employment with [redacted] directly contradicts the applicant's claim on his Form I-700 application to have been employed in agricultural employment during the twelve-month eligibility period ending May 1, 1986.

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.