

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

21

FILE:



Office: CALIFORNIA SERVICE CENTER

APR 28 2005
Date:

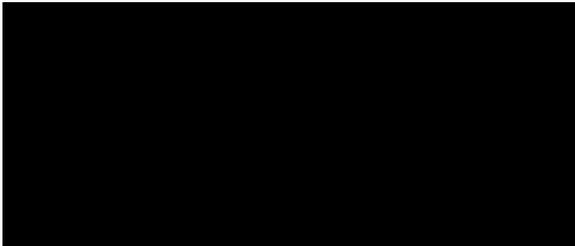
IN RE:

Applicant:



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:



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 District Director, Phoenix, Arizona, reopened and denied by the Director, California Service Center. The matter is before the Administrative Appeals Office (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 [REDACTED].

Although the applicant did not respond to the more recent decision of denial, her appeal taken from the previous decision of denial is still in effect. In that appeal, the applicant reiterated her claim of employment in agriculture. The applicant's employment claim and the evidence are addressed below.

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 159 man-days harvesting lettuce and cabbage from May 1, 1985 to October 31, 1985 for [REDACTED] in Chandler, Arizona.

In support of her claim, the applicant submitted a corresponding Form I-705 affidavit and two separate employment letters, all signed by [REDACTED] who indicated that the applicant was employed in Maricopa, Arizona.

On April 12, 1988, the District Director, Phoenix, Arizona denied the application citing that the applicant's claimed employment was not credible. On appeal, the applicant reiterated her claim of employment in agriculture for ten (10) months. The applicant stated that she did not know why her application was denied. On January 25, 1991, the decision of the district director was set aside and the application was reopened.

In the course of attempting to verify the applicant's claimed employment, the Service acquired information which contradicted the applicant's claim. A Service officer contacted an official of the Cooperative Extension Service of the University of Arizona, and was informed that lettuce and cabbage are not harvested during the months claimed by the applicant.

On January 25, 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 does not contain a response from the applicant.

The center director concluded the applicant had not overcome the derogatory evidence, and denied the application on August 29, 1991. The applicant did not make any additional statements nor submit any additional evidence in response to the center director's denial of her 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).

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.)*.

According to state agricultural officials, lettuce and cabbage are not harvested in Arizona during the summer months. The applicant has not addressed nor overcome this derogatory evidence which directly contradicts her claim. Therefore, the documentary evidence submitted by the applicant cannot be considered as having any probative value or evidentiary weight.

It must be noted that, on May 5, 1989, [REDACTED] guilty to violating 8 USC Section 1160(b)(A)(ii). This section deals with creating and supplying false documents for applicants for status as special agricultural workers. Given that the applicant's claim relies entirely on documents signed by Mr. [REDACTED] his fraud conviction cannot be overlooked when evaluating the overall credibility of the applicant's claim.

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.