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U.S. Citizenship
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Services

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FILE:

XPY 88 128 1015

Office: CALIFORNIA SERVICE CENTER

Date:

SEP 11 2006

IN RE:

Applicant:



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, Chief
Administrative Appeals Office

DISCUSSION: The application for temporary resident status as a special agricultural worker (SAW) was denied by the Director, Western Service Center and then remanded by the Legalization Appeals Unit (LAU), now the Administrative Appeals Office (AAO). The matter is now before the AAO on appeal. The appeal will be dismissed.¹

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 decision was based, in part, on evidence adverse to the applicant's claim of employment for [REDACTED] and on the applicant's failure to respond to Service notices.

Although the applicant did not respond to the more recent opportunity to supplement his appeal, his appeal is still in effect. In that appeal, the applicant states that he worked under an alias and that he worked for other, previously not named, employers. The applicant submits additional evidence.

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 a total of 385 man-days picking carrots for [REDACTED] at [REDACTED] from May 1, 1983 to May 1, 1986. In Section 4 "Other Names Used or Known by," the applicant wrote "none."

In support of the claim, the applicant submitted a corresponding Form I-705 affidavit and two separate employment verification letters, all of which were purportedly signed by [REDACTED]. [REDACTED] indicated that the applicant was employed from May 1, 1983 to May 1, 1986.

On July 30, 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, a Service officer contacted the administrative assistant for [REDACTED] who stated that [REDACTED] had never worked as a supervisor for that farm but may have worked for [REDACTED] owned by [REDACTED]. The office manager of [REDACTED] informed the officer that [REDACTED] had been employed as a supervisor from February 25, 1985 to March 14, 1985, and did not work for the farm at any other time before or since.

The director denied the application on August 29, 1991 primarily because the applicant had not responded to the Service's notices.

¹ 8 C.F.R. § 103.2(a)(3) specifies that an applicant may be represented "by an attorney in the United States, as defined in § 292.1(a)(6) of this chapter, or by an accredited representative as defined in § 292.1(a)(4) of this chapter." The term attorney means any person who is a member in good standing of the bar of the highest court of any state and is not under any order of any court suspending, enjoining, restraining, disbaring, or otherwise restricting him in the practice of law. 8 C.F.R. § 1.1(f). In this case, the person listed on the G-28 is no longer an active member of the Arizona State bar. Therefore, the AAO may not recognize counsel in this proceeding.

On appeal, the applicant submits a personal statement in which he claims that he worked using the alias Jorge [REDACTED] under the Social Security Number (SSN) [REDACTED]. The applicant states that his application verifies this information. The applicant further claims that he worked at [REDACTED] in Colorado and Arizona and at [REDACTED] in Arizona. The applicant states that he has requested copies of his W-2 Wage and Tax Statements, but that it may take months to get them. The applicant submits photocopies of seven different wage statements, all dated 1983, from [REDACTED] to a [REDACTED] SSN [REDACTED].

On November 1, 1993, the LAU determined that the applicant had not been apprised of any adverse evidence prior to the denial of the application, and remanded the case to enable the director to notify the applicant of the adverse evidence and afford the applicant the opportunity to supplement his appeal. On September 7, 2004, the applicant was provided a copy of the decision and the Notice of Intent to Deny. The record contains no response from the applicant to those notices.

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.), June 15, 1989.

While the applicant reiterates his employment claim for the [REDACTED] on appeal, he has provided no documentation pertinent to rebut the adverse evidence. Further, according to farm officials, [REDACTED] was not employed by either [REDACTED] or [REDACTED] during the qualifying period. 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 applicant raises questions of credibility when asserting entirely new claims to eligibility on appeal. In such instances, the Service may require credible evidence to support the new claims as well as a complete plausible explanation concerning the applicant's failure to advance these claims initially. The instructions to the application do not encourage an applicant to limit his claim; rather they encourage the applicant to list multiple claims as they instruct him to show the most recent employment first.

The applicant's claim to have been employed by [REDACTED] and at [REDACTED] was first brought to the Service's attention at the appellate level. The applicant offers no account as to why this entirely new claim to eligibility was not advanced on the application or at the interview. The very purpose of the Form I-700 application is to allow the applicant to claim the qualifying agricultural employment which entitles him to the benefits of status as a special agricultural worker.

Larger issues of credibility arise when an applicant claims employment which is called into question through Service investigation, and later attempts to establish eligibility with different employers, heretofore never mentioned to the Service. The applicant's advancement of new employment claims does not address, resolve, or diminish the credibility issues raised by the adverse evidence regarding the applicant's initial claim. Furthermore, the applicant's additional claim of employment as [REDACTED] is not corroborated by the applicant's application as claimed by the applicant on appeal. The Form I-700 application lists no aliases or Social Security Numbers used by the applicant even though the form specifically asks for that information. It must be pointed out that the applicant's claimed employment for [REDACTED] and at [REDACTED] provides no information as to when this employment took place or how many man-days were worked. The applicant has provided no evidence at all to corroborate his additionally claimed employment, although he indicates that such proof will be forthcoming. Therefore, the applicant's overall credibility remains in question. For this reason, the applicant's new claims of employment will not serve to fulfill the qualification requirements necessary for status as a special agricultural worker.

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.