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

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FILE:

XID 88 128 2065

Office: CALIFORNIA SERVICE CENTER

Date: SEP 13 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 was denied by the Director, Western Service Center, and is now before the Administrative Appeals Office (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. This decision was based on adverse information acquired by the Service relating to the applicant's claim of employment for [REDACTED] at Desert Sun, Inc.

On appeal, the applicant reaffirms his claimed eligibility and stats that he is submitting additional proof of his agricultural employment. 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 92 man-days of qualifying agricultural services for [REDACTED] Desert Sun in Blythe County, California from January 1986 to April 1986.

In support of the claim, the applicant submitted a corresponding Form I-705 affidavit, a photocopied Farm Labor Contractor Certificate of Registration, and two photocopied California driver's licenses, all signed by [REDACTED]

In attempting to verify the applicant's claimed employment, the Service acquired information which contradicted the applicant's claim. The former secretary/treasurer of Desert Sun, Inc. informed the Service that the company had not employed [REDACTED] during the qualifying period.

On December 5, 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 applicant responded with a personal letter requesting an additional 60 days to gather and submit additional evidence to corroborate his claimed employment.

The director concluded the applicant had not overcome the derogatory evidence, and denied the application on January 22, 1992. On appeal, the applicant states that he is providing proof that he performed agricultural

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 South Dakota State bar. Therefore, the AAO may not recognize counsel in this proceeding.

services. The applicant submits a second Form I-705 affidavit claiming 321 man-days employment cutting mushrooms at Ocean View Farm in Orange, California for [REDACTED] from June 4, 1984 to November 21, 1985.

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.

According to the secretary/treasurer of the farm, [REDACTED] did not work for Desert Sun, Inc. during the qualifying period. The applicant has not addressed or overcome this derogatory evidence which directly contradicts his claim. Therefore, the documentation submitted by the applicant cannot be considered as having any probative value or evidentiary weight.

Furthermore, an applicant raises questions of credibility when asserting an entirely new claim to eligibility on appeal. In such instances, the Service may require credible evidence to support the new claim as well as a complete plausible explanation concerning the applicant's failure to advance this claim 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] at Ocean View Farm 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 a different employer, heretofore never mentioned to the Service. The applicant's advancement of a new employment claim does not address, resolve, or diminish the credibility issues raised by the adverse evidence regarding the applicant's initial claim. Therefore, the applicant's overall credibility remains in question. For this reason, the applicant's new claim of employment for Ocean View Farm will not serve to fulfill the qualification requirements necessary for status as a special agricultural worker.

The applicant has failed to establish the performance of at least 90 man-days of qualifying agricultural employment during the twelve-month 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.