



U.S. Citizenship
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FILE:

[REDACTED]
XEC 88 215 2026

Office: CALIFORNIA SERVICE CENTER

Date: DEC 19 2007

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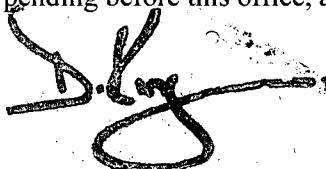
Applicant: [REDACTED]

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. 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. The Chief of the Legalization Appeals Unit (LAU), now the Administrative Appeals Office (AAO), subsequently remanded the case. The AAO remand will be withdrawn and the case will be reopened *sua sponte*. The appeal will be dismissed.

The applicant was admitted to the United States at the Calexico, California, Port of Entry on June 30, 1988, as an S-9 preliminary applicant. The director denied the application because the applicant submitted employment documents that differed significantly from the claim of employment as set forth in the original I-700, Application for Temporary Resident Status as a Special Agricultural Worker.

On appeal, the applicant stated that he only listed one employer on the Form I-700 because he didn't realize that all agricultural employers during the eligibility period should have been listed.

The record contains a Form G-639, Freedom of Information/Privacy Act Request, a Form G-28, Notice of Entry of Appearance As Attorney or Representative, signed on June 20, 1991, by attorney [REDACTED] and "██████████," and a letter dated July 9, 1991, from Mr.

Mr. █████ requested a copy of the record of proceeding relating to "██████████" ██████████ date of birth January 13, 1960, alien registration number ██████████. Mr. █████ indicated on the Form G-639 that "██████████" was born in Moctezuma, Mexico, and last entered the United States near Laredo, Texas, in September 1979. ██████████ Orozco, the person to whom this record of proceeding relates, was born in Pericos ██████████, Nayarit, Mexico, on January 13, 1960. Although the names of ██████████ and "██████████" are similar and both aliens share the same date of birth, January 13, 1960, they are not one and the same person. The "██████████" represented by attorney ██████████ was a resident of Houston, Texas, and the alien in this proceeding, ██████████, resided in Riverside, California. The signature of "██████████" ██████████ on the Form G-28 and the Form G-639 submitted by Mr. █████ do not appear to match the signature of "██████████" the alien to whom this record of proceeding relates. The Form G-28, the Form G-639, and the letter from Mr. █████ dated July 9, 1991, all appear to have been mis-filed in this record of proceeding due to the similarity of names and dates of birth of these two individuals.

The LAU erroneously remanded the matter on February 24 2000, for compliance with the Freedom of Information Act request filed by Mr. █████ on behalf of "██████████" alien registration number ██████████. Since the Form G-639 was filed on behalf of a different alien in a different proceeding, the previous decision of the LAU remanding the case for compliance with the Freedom of Information Act request is hereby withdrawn and the matter is reopened *sua sponte*. The appeal will be adjudicated based on the material contained in the record of proceeding.

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, as amended, 8 U.S.C. § 1160, 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).

The applicant was admitted to the United States at Calexico, California on June 30, 1988, as an S-9 applicant who established a preliminary claim to eligibility for temporary resident status as a special agricultural worker. The applicant was admitted for a period of 90 days in accordance with 8 C.F.R. § 210.2(c)(4)(iii), and required, within that 90 day period, to submit a complete application, along with a Fingerprint Card, Form FD-258, to any legalization office. A complete application included evidence of qualifying employment, evidence of residence, a report of medical examination and the prescribed number of photographs. 8 C.F.R. § 210.1(d).

The record reveals that, at the time of entry, the applicant signed an Immigration and Naturalization Service advisory statement (written in both English and Spanish) that outlined the procedures for filing a preliminary application. This statement reads, in pertinent part, "Do not make any changes on this application. If the information on the application is different from that on the supporting documents, you must be able to explain the difference to the immigration officer during the interview."

At the time of entry into the United States, the applicant's Form I-700 application listed "over 90" man-days picking cauliflower for [REDACTED] at various farms in Monterrey, California, during the period from December 1985 to April 1986.

The supporting documentation submitted by the applicant does not correspond to the claim on the I-700 application presented at the border. Specifically, the applicant submitted a Form I-705 affidavit and separate employment letter, both signed by [REDACTED], who identified himself as a "sharecropper with contractor," stating that the applicant worked for him for 110 man-days harvesting strawberries at Union Sugar Berry in San Bernardino County, California, during the period from May 1, 1985 to October 24, 1985.

The director denied the application on January 17, 1992, because the applicant had severely diminished his credibility by revising his employment claim.

On appeal, the applicant stated that, at the time of his entry as a preliminary S-9 applicant, he was not told that he should list all agricultural employers during the requisite period on his Form I-700. He claimed that during his interview, he "was not asked to explain" the discrepancy in his claimed agricultural employment during the requisite period. As noted above, the Form I-700 application presented by the applicant at the border at his time of entry listed his period of employment for [REDACTED] picking cauliflower at various farms in Monterrey, California, during the requisite period.

The instructions to part #23 of the Form I-700 ask applicants to list "Fieldwork in perishable commodities from May 1, 1983 to May 1, 1986." Furthermore, the instructions to the application do not encourage applicants to limit their claims; rather, applicants are encouraged to list multiple claims, as they are instructed to show the most recent employment first.

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 that 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*, supra.

The applicant submitted a significantly revised claim to eligibility without an adequate explanation, and has thereby raised serious questions of credibility that have not been overcome on appeal. Therefore, the documentary evidence submitted by the applicant cannot be considered as having any probative value or evidentiary weight.

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.