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[Redacted]

FILE: [Redacted]
XMA 88 043 6019

Office: CALIFORNIA SERVICE CENTER

Date: JAN 25 2007

IN RE: Applicant: [Redacted]

APPLICATION: Application for Temporary Resident Status under Section 210 of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1160

ON BEHALF OF APPLICANT:

[Redacted]

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 was denied by the Director, Eastern Regional Processing Facility, and appealed to the Legalization Appeals Unit (LAU). The LAU remanded the case to the director. The director issued a notice of intent to deny the application for temporary resident status and informed the applicant of derogatory information. The director again denied the application on September 29, 2005 and the matter 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 Service relating to the applicant's claim of employment for [REDACTED]. [REDACTED] was charged with several counts of violating federal law because he was directly involved in the sale of fraudulent employment affidavits for use in making applications for temporary resident status under the Special Agricultural Worker program. The director further determined that the applicant claimed to have lived at [REDACTED] during his alleged employment with [REDACTED] but that this was the address of [REDACTED] and not a housing unit for employees. Further the affidavit that [REDACTED] submitted on behalf of the applicant indicated that the applicant also resided at [REDACTED] a non-existent address. Finally, the director denied the application because the applicant's name could not be found in the quarterly wage reports of the employer with the California Employment Development Program.

The applicant, through counsel, submitted a timely appeal.¹

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 the provisions of 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 I-700 application, the applicant claimed to have worked for [REDACTED] for 95 days pruning grapes and that he resided at [REDACTED] from December 1985 to April 1986. On his affidavit, [REDACTED] indicated that the applicant lived at [REDACTED], during the period he worked with Mr. [REDACTED] from December 1, 1985 to April 30, 1986.

¹ The director initially denied the application on October 10, 1990. The applicant timely appealed on November 13, 1990. On December 30, 1996, the AAO remanded the case and stated that the applicant could file an appeal without fee should his case be denied again. The director again denied the application on September 29, 2005. The applicant attempted to file an appeal on October 27, 2005. The appeal was rejected because the proper fee was not attached. The applicant resubmitted his appeal on November 8, 2005 with the proper fee.

In support of his claim, the applicant submitted an affidavit of [REDACTED] dated November 17, 1987 and a Form I-705 from the same.

In the course of attempting to verify the applicant's claimed employment, the Service acquired information that contradicted the applicant's claim. According to an investigation conducted by the Fresno District Office, [REDACTED] was directly involved in the sale of fraudulent employment affidavits for use in making applications for SAW status. Further, it was determined that [REDACTED] an address that the applicant used, was non-existent.²

On September 11, 1997, 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.

In response to the Service's notice, the applicant submitted a statement from his attorney asserting that the allegation that [REDACTED] was involved in the sale of fraudulent employment affidavits had not been affirmed by any court; hence, should not be the basis to deny the application.

On July 24, 1989, [REDACTED] and 3 other defendants were indicted by a grand jury for the United States District Court for the Eastern District of California on charges of violating 8 U.S.C. § 1160(b)(7)(A)(ii), Creates or Supplies a False Writing or Document for Use in Making Application for Special Agricultural Worker (SAW) Status, and 18 U.S.C. § 371, Conspiracy to violate the above-mentioned statute. (CR-F-88-059). The other defendants pled guilty to several counts; however, [REDACTED] fled to Mexico before he could be served.

The director concluded the applicant had not overcome the derogatory evidence, and denied the application. On appeal, the applicant asserts that the director failed to link the applicant with the alleged sale of fraudulent employment documents. The applicant, through counsel, also asserts that the addresses should not be the basis for denial because only employment requires verification, not residence. The applicant also asserts that since he did not have a social security number, his name would not appear in quarterly wage reports filed with the California Employment Development Department.

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

² The applicant submitted an affidavit written by _____ that verified the applicant's employment and stated that during the employment period, the applicant resided at [REDACTED]

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.

The derogatory information obtained by the Service regarding the applicant's claimed addresses, and [REDACTED] and his quarterly wage reports directly contradict the applicant's claim. The applicant has not overcome such derogatory evidence.

The applicant has the burden of proof to establish his eligibility by a preponderance of the evidence. 8 C.F.R. § 210.3. The applicant's residences during his alleged employment in agriculture are relevant. [REDACTED] asserted that the applicant lived at [REDACTED] while working for Mr. [REDACTED]. The Service determined the [REDACTED] address was non-existent. On his Form I-700, the applicant stated that he resided at [REDACTED] while working for Mr. [REDACTED]. The Service determined that [REDACTED] was Mr. [REDACTED] home address, and not housing for farm workers. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

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.