U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529

U.S. Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

[redacted]

L1

JUL 10 2007

FILE: [redacted] Office: LOS ANGELES Date:

XLA 88 525 1176

IN RE: 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 initially denied by the Director, Western Service Center. The case was subsequently reopened and denied again by the District Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district 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 regarding the applicant's claim of employment for [redacted]

On appeal, the applicant reiterates his claim of qualifying agricultural employment for [redacted]

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 to have performed 93 man-days of qualifying agricultural employment for [redacted] hoeing and picking strawberries, raspberries, corn, pumpkins, cauliflower, and cabbage in "Clack, Oregon" from May 15, 1985 to May 1, 1986.

In support of the claim, the applicant submitted a Form I-705 affidavit signed by [redacted], who identified herself as a grower. [redacted] stated on the Form I-705 that the applicant worked for her for 93 man-days hoeing and picking strawberries and raspberries, corn, pumpkins, cauliflower, and cabbage at [redacted] in Clack [sic], Oregon. The applicant also submitted a separate fill-in-the-blank affidavit signed by [redacted] on April 8, 1988.

In attempting to verify the applicant's claimed employment, the Immigration and Naturalization Service, or the Service (now, Citizenship and Immigration Services, or CIS) acquired information that contradicted the applicant's claim. Specifically, the Service learned that on September 18, 1990, [redacted] made a declaration in the United States Attorneys Office and the United States District Court at Portland, Oregon, that she and her husband, [redacted], employed about 30 persons for 90 days or more during the period from May 1, 1985 to May 1, 1986. [redacted] supplied a list of the people who worked for them for 90 days or more during that period. The applicant's name does not appear on the list.

Furthermore, [redacted] provided a list of the people who worked for them for less than 90 days during the period from May 1, 1985 to May 1, 1986. The applicant's name does not appear on this list either.

[redacted] further stated that all other Forms I-705 signed by either of them were false.

On March 4, 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 contains a postal return receipt signed on March 6, 1991, acknowledging receipt of the notice, but the record does not contain a response from the applicant to the Service's notice.

The service center director concluded the applicant had not overcome the derogatory evidence, and denied the application on January 22, 1992. The record contains a postal return receipt signed by the applicant on February 1, 1992, acknowledging receipt of the denial decision.

On appeal, the applicant stated that he believed he was eligible for temporary resident status, but he did not submit any evidence to overcome the adverse information regarding his claim of qualifying agricultural employment for [redacted]

The applicant was subsequently interviewed again at the Los Angeles District Office on August 2, 2006. At that time, the applicant was once again informed of the adverse information regarding [redacted] and [redacted]. At the conclusion of the interview, the applicant was issued a Form I-72 providing him with another opportunity to submit evidence to overcome the adverse information regarding his claim of qualifying agricultural employment for [redacted] The record does not contain a response from the applicant.

The district director denied the application on April 13, 2007, because the applicant failed to submit any evidence to overcome the adverse information regarding his claim of qualifying agricultural employment for [redacted]

On appeal, the applicant reiterates his claim of qualifying agricultural employment for [redacted], but he does not submit any new evidence to corroborate his claim or to overcome the adverse information regarding his claim of employment for [redacted]

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).

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.).

[redacted] and [redacted] stated that about 30 people worked for them for more than 90 man-days during the twelve-month period ending on May 1, 1986. [redacted] provided the Service with a list of the names of individuals who worked for them for more than 90 man-days during the twelve-month period ending on May 1, 1986, and the applicant's name does not appear on this list. [redacted] also provided the Service with a list of the names of all the individuals who worked for them for less than 90 man-days during the period in question. The applicant's name does not appear on this list either. [redacted] both stated that all other Forms I-705 relating to agricultural employment for them at [redacted] during the requisite period are false. The applicant has twice been informed of this adverse information, but has failed to submit any evidence to overcome this adverse evidence, which directly contradicts his employment claim. Therefore, the documentary evidence submitted by the applicant cannot be considered as having any probative value or evidentiary weight.

The applicant has, therefore, 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.

It is noted that the applicant was arrested in Los Angeles, California, on January 19, 1994, and charged with: (1) driving under the influence of alcohol in violation of section 23152(a) of the California Vehicle Code, a misdemeanor, and (2) driving under the influence of alcohol with a blood alcohol content of 0.08% or greater in violation of section 23152(b) of the California Vehicle Code, a misdemeanor. On January 20, 1994, the applicant was convicted in the Municipal Court of Metropolitan Courthouse Judicial District, County of Los Angeles, State of California, of Count 2, driving under the influence of alcohol with a blood alcohol content of 0.08% or greater in violation of section 23152(b) of the California Vehicle Code, a misdemeanor. Count 1 was dismissed in the furtherance of justice pursuant to section 1385 of the California Penal Code. The court placed the applicant on probation for a period of 36 months under the condition that he pay fines and fees in the amount of $1,045.00. The court further ordered the applicant to enroll in and successfully complete a three-month licensed first offender alcohol counseling program. (Case Number [redacted]

On February 8, 2003, the applicant was arrested in Los Angeles, California, and charged with assault with a deadly weapon other than a gun in violation of section 245(a)(1) of the California Penal Code, a felony. On April 23, 2003, the complaint was amended in the Superior Court of California, County of Los Angeles, to allege Count 1 as a misdemeanor pursuant to section 1785 of the California Penal Code and the court proceeded with the charge as a misdemeanor. On August 17, 2004, the applicant was convicted of this charge as a misdemeanor. The court

California, County of Los Angeles, to allege Count 1 as a misdemeanor pursuant to section 1785 of the California Penal Code and the court proceeded with the charge as a misdemeanor. On August 17, 2004, the applicant was convicted of this charge as a misdemeanor. The court suspended imposition of sentence and placed the applicant on probation for a period of 36 months provided that he pay a court security assessment of $20.00; pay a restitution fee of $100.00 and perform 30 days of Cal Trans. The court ordered the applicant to enroll in and complete a three-month anger management program, to be attended one time per week for three months, with proof of enrollment due in court on September 17, 2004. (Case Number [redacted]

An alien is inadmissible if he has been convicted of a crime involving moral turpitude (other than a purely political offense), or if he admits having committed such crime, or if he admits committing an act which constitutes the essential elements of such crime. Section 212(a)(2)(A)(i)(I) of the Act.

The most commonly accepted definition of a crime involving moral turpitude is an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellow men or to society in general, contrary to the accepted and customary rule of right and duty between man and man. *Jordan v. De George*, 341 U.S. 223, reh'g denied, 341 U.S. 956 (1951).

Pursuant to section 212(a)(2)(A)(ii) of the Act, an alien who has been convicted of a crime involving moral turpitude is not inadmissible to the United States if the crime was committed when the alien was under 18 years of age or if the maximum penalty possible for the crime of which the alien was convicted did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of six months.

In this case, the applicant was convicted of assault with a deadly weapon other than a gun as a misdemeanor. The misdemeanor offense of which the applicant was convicted was not punishable by imprisonment for one year, and the applicant was not sentenced to serve any time in prison; rather, he was placed on probation for a period of 36 months. Therefore, this one misdemeanor conviction meets the petty offense exception and does not render the applicant inadmissible to the United States under section 212(a)(2)(A)(ii) of the Act. Two misdemeanor convictions do not render the applicant ineligible for temporary resident status.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.