

U.S. Department of Homeland Security
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Washington, D.C. 20529



**U.S. Citizenship
and Immigration
Services**

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FILE: [REDACTED]
XVN 89 008 02051

Office: CALIFORNIA SERVICE CENTER

Date: MAR 19 2007

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. Any further inquiry must be made to that office.


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 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 statutory period. This determination was based on adverse information acquired by the legacy Immigration and Naturalization Service (INS) relating to the applicant's claim of employment for [REDACTED] at [REDACTED]

On appeal, the applicant does not reaffirm his original claim to have performed 90 qualifying agricultural services for [REDACTED]. The applicant puts forth a new claim of employment for [REDACTED] during the qualifying period.

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, provided the alien is otherwise admissible under section 210(c) of the Act and is 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 95 man-days from November 1985 to April 1986 for [REDACTED] at [REDACTED] in Kern County, California. In support of the claim, the applicant submitted a corresponding Form I-705 affidavit purportedly signed by [REDACTED]. The applicant also submitted an employment letter from [REDACTED] who identified himself as a crew foreman for [REDACTED]. [REDACTED] indicated that the applicant worked 95 man-days pruning grapes from December 1985 to March 1986 at [REDACTED].

In attempting to verify the applicant's claimed employment, the legacy INS acquired information which contradicted the applicant's claim. In a letter dated August 5, 1988, [REDACTED] manager of [REDACTED] indicated that [REDACTED] was employed as a contractor from January 9, 1985 to May 7, 1985. As such, the applicant could have only worked a maximum of seven man-days during the twelve-month eligibility period.

On April 29, 1992, the applicant was advised in writing of the adverse information obtained by the legacy INS, and of its intent to deny the application. The applicant was granted thirty days to respond. The applicant, however, failed to respond to the notice. The director concluded the applicant had not overcome the derogatory evidence, and denied the application on June 19, 1992.

On appeal, the applicant submits an additional employment letter from [REDACTED] indicating, "I worked for several labor-contractors I made a mistake and I am now correcting it." [REDACTED] indicated that the applicant worked 92 man-days from July 1985 to October 1985 laboring in grapes for labor contractor [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).

An applicant raises serious questions of credibility when asserting an entirely new claim to eligibility at the appellate level. The applicant offers no account as to why this entirely new claim to eligibility was not advanced

on the Form I-700 application or in response to the Notice of Intent to Deny and the applicant has provided no evidence at all to corroborate his revised claimed employment. 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. 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.

The advancement of a new employment claim does not resolve or diminish the fact that the applicant provided a Form I-705 affidavit signed by [REDACTED] attesting to the applicant's alleged employment at [REDACTED].

Further, the initial employment letter from [REDACTED] raises questions to its credibility as the employment dates indicated did not correspond with the dates listed on the I-705 affidavit signed by [REDACTED]. As the applicant has not contested the finding that his initial claim was false, his overall credibility is suspect. For this reason, the applicant's new claim 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.