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

PUBLIC COPY

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: NOV 20 2007

XWP 87 091 2005

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:

[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 as a special agricultural worker was denied by the Director, Texas Service Center, and 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.

On appeal, counsel asserted that the Immigration and Naturalization Service (the Service), now Citizenship and Immigration Services (CIS), failed to provide the applicant with a notice of adverse information relating to his claim of qualifying agricultural employment for [redacted] Counsel further stated that the applicant had gathered evidence and documentation in support of his claim and would submit additional evidence within 30 days of April 20, 2007, the filing date of the appeal. The record does not contain a brief or any additional evidence submitted by counsel after the filing date of the appeal.

On October 29, 2007, the AAO faxed correspondence to counsel informing him that the record of proceeding contains no indication that a brief or additional evidence was ever submitted in support of the appeal. Counsel was granted five business days to submit a copy of any brief or additional evidence previously submitted to the AAO by mail or fax, along with evidence to prove that such brief or evidence was timely submitted within 30 days of the filing date of the appeal. To date, counsel has not responded to the AAO fax. Therefore, the record will be considered complete and a decision will be rendered based on the evidence of record as it is presently constituted.

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 worked for [redacted] for 132 man-days picking tomatoes and peppers in Collier, Florida, during the period from May 1985 to September 1985; for 66 man-days picking tomatoes in Palmetto, Florida, during the period from September 1985 to December 1985; and for 66 man-days picking tomatoes in Charleston, South Carolina, during the period from December 1985 to March 1986.

In support of the claim, the applicant submitted a Form I-705 affidavit from [redacted] stated that the applicant worked for him picking tomatoes and bell peppers in Collier, Florida, for 22 days during the period from May to June 1985 and for 88 days during the period from October 1985 to January 1986. [redacted] further indicated that the applicant worked for him for 44 days picking tomatoes and bell peppers in Palmetto, Florida, from June 1985 to July 1985, and for 22 days picking tomatoes and bell peppers in Charleston, South Carolina from July to August 1985.

The applicant submitted a separate affidavit from [redacted] in which [redacted] stated that he had been "self-employed in the business of harvesting, classifying (grading) and selling a variety of produce" since 1983. He further stated that he worked with tomatoes, bell peppers, and watermelons, in Collier County, Florida from October through February and from April to June; with tomatoes and bell peppers in Palmetto, Florida, in May, June, and July; with tomatoes in West Dover, Maryland, in August and September; and with tomatoes in Johnson City, Tennessee, from July to August. [redacted]

> I sometimes hire several hands to assist me in the different types to [sic] field work. I work from six months to a few weeks in each place, depending on the crop and the availability of each crop. All the purchasing of crop in the fields is handled on a "cash only" basis, and it is sold in the open markets in each of the different towns where I work.
>
> I attest under penalty of perjury that the above information is true and correct and complete and that [redacted] is one of the persons who worked for me during the May 1, 1985 – May 1, 1986 season.

According to the notes of the Service officer who conducted the applicant's interview, the applicant's testimony during his interview did not agree with the information provided on the Form I-700 application or the Form I-705 signed by [redacted] The applicant stated during the interview that he began working for [redacted] on February 10, 1985. [redacted] stated on the Form I-705 that the applicant began working for him on May 1, 1985.

The applicant stated during his interview that he worked for [redacted] in the following locations during the following employment periods:

[redacted]

These dates and places of agricultural employment provided by the applicant during his interview contradict the information he provided on his Form I-700. They also contradict the information [redacted] provided in his Form I-705 affidavit. These contradictions in the applicant's employment claim raise serious questions of credibility regarding his claim.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, it is incumbent on the applicant 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 lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

On August 20, 1988, the director issued a notice informing the applicant of his intent to deny the application because the applicant's employment claim lacked credibility. The director granted the applicant thirty days to submit additional evidence to corroborate his claim such as pay stubs, piecework receipts, Forms W-2 Wage and Tax Statement, or certified copies of records maintained by agricultural producers or farm labor contractors. The notice was mailed to the applicant at his address of record, but was returned to the Service as unclaimed mail.

The director concluded the applicant had not overcome the derogatory evidence, and denied the application.

On appeal, counsel asserts that the director failed to provide the applicant with a notice of intent to deny his application. Counsel states that since the applicant never received the notice of intent to deny, he clearly was not aware that he had to submit additional evidence.

Counsel's statement is incorrect. The director issued a notice of intent to deny the application and mailed it to the applicant's address of record. The notice was returned to the Service as unclaimed mail. Therefore, the applicant's failure to receive the notice is not due to any error on the part of the Service, now CIS. It is the applicant's responsibility to keep the Service informed of all address changes in a timely fashion.

Furthermore, it is noted that the applicant filed a Freedom of Information Act request for a copy of the record of proceeding on October 4, 1996. A copy of the record was subsequently mailed to the applicant at his updated address. Therefore, the applicant was clearly aware of the notice requesting that he submit additional evidence to corroborate his claim prior to the issuance of the denial decision or the filing of his appeal. The applicant has not submitted any additional evidence to corroborate his claim.

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*, Civil No. S-87-1064-JFM (E.D. Cal.).

The applicant has failed to submit any evidence to overcome the contradictions and discrepancies noted above. 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.