



U.S. Citizenship  
and Immigration  
Services

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**MAR 05 2009**

FILE:

[REDACTED]  
XSM-89-070-3132

Office: CALIFORNIA SERVICE CENTER

Date:

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:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

  
John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** This matter is an application for temporary resident status as a special agricultural worker that was initially denied by the Director, Western Service Center and came before the Administrative Appeals Office (AAO) on appeal. The matter was remanded by the AAO and the application was subsequently denied again by Director, California Service Center. The case is again before the AAO on appeal and the appeal will be sustained.

The director initially denied the application because the applicant failed to demonstrate that he had performed at least 90 man-days of qualifying agricultural employment during the 12-month period ending May 1, 1986. The director denied the application, and the applicant appealed. The AAO remanded upon the request of the director. On remand, the director notified the applicant of an unresolved criminal arrest, and gave the applicant the opportunity to submit court documents disposing of the charges. The applicant failed to submit the evidence requested, and the director denied the application, finding the applicant failed to establish his admissibility and eligibility. On appeal, the applicant submitted evidence of his criminal conviction.

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 (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 112 days of employment picking strawberries for [REDACTED] in Santa Barbara, California from May 1, 1985 to May 1, 1986. The director initially denied the application, based upon adverse information about [REDACTED]. The applicant appealed the decision. On appeal, the Legalization Appeals Unit (LAU) determined that the adverse evidence in the file was insufficient to support the director's finding. The LAU remanded the file to the director.

On November 6, 2007, the director advised the applicant in writing of the intent to deny his application again. Specifically, the applicant was informed that the applicant could be found ineligible for temporary resident status as an alien who had been convicted of a felony and or three or more misdemeanors. The applicant was granted thirty days to respond. The record shows that the applicant failed to respond to the notice of intent to deny. The director concluded the applicant had not overcome the grounds cited as the basis for the intended denial, and denied the application for a second time on January 24, 2008.

On appeal, the applicant reaffirms his claim of employment for [REDACTED] during the eligibility period. 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).

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... if the Service [now CIS] has not obtained information which would refute the applicant's evidence, the applicant satisfies the requirements for the SAW [special agricultural worker] program with respect to the work eligibility criteria. *United Farm Workers (AFL CIO) v. INS*, Civil No. S 87 1064 JFM (E.D. Cal. June 15, 1989).

In concluding that the applicant was ineligible to adjust to temporary resident status as a special agricultural worker, the director determined that the record did not contain sufficient verifiable evidence to demonstrate that the applicant performed at least 90 days of qualifying agricultural employment for [REDACTED] at [REDACTED] from May 1, 1985 to May 1, 1986. However, the incomplete Form I-705 affidavit must be viewed as probative of the applicant's claim of employment for [REDACTED] provided the same address on both the Form I-705 affidavit and separate affidavit as a means by which he could be contacted for verification purposes. Therefore, the director's finding that the record did not contain sufficient verifiable evidence to demonstrate that the applicant performed at least 90 days of qualifying agricultural employment for [REDACTED] at [REDACTED] from May 1, 1985 to May 1, 1986 is withdrawn.

Accordingly, the applicant has submitted sufficient evidence to establish as a matter of just and reasonable inference 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 has overcome the initial grounds cited by the district director as the basis for denial.

On appeal, the applicant submitted evidence that the arrest noted by the director had resulted in a single misdemeanor conviction. A single misdemeanor conviction does not disqualify the applicant for temporary resident status as a special agricultural worker. The applicant has overcome the most recent grounds cited by the district director as the basis for denial.

Accordingly, the applicant's appeal will be sustained. The district director shall continue the adjudication of the application for temporary resident status as a special agricultural worker.

**ORDER:** The appeal is sustained.