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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
Washington, DC 20529 - 2090

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: Cleveland Date: MAR 18 2009

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. 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: The application for temporary resident status as a special agricultural worker and a subsequent motion to reopen were denied by the Director, Cleveland. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

On March 2, 1993, the applicant filed a reconstructed application for temporary resident status as a special agricultural worker (Form I-700). The director denied the application, finding that the applicant failed to appear for scheduled interviews at the Cleveland Office on December 3, 1993 and again on February 4, 1994.

On April 12, 2006 the applicant filed a motion to reopen the denied Form I-700 on the grounds that he was unfairly requested to appear for an interview in Cleveland after notifying the Immigration & Naturalization Service (INS), now United States Citizenship & Immigration Services (USCIS) that he moved to Florida. The director denied the motion to reopen on the grounds that motions to reopen are not allowed under the special agricultural worker program, and declined to reopen the matter on his own motion as it had been 12 years between the time the Cleveland office denied the Form I-700 and the filing of the motion to reopen.

Upon review, the AAO accepted the appeal and notified the applicant of adverse information of record, and further cited grounds for denial not mentioned by the director. The AAO also notified the applicant that he appeared inadmissible for having materially misrepresented his claim for benefits. The AAO gave the applicant 30 days to respond to the notice.

In response to the notice, the applicant submits evidence previously submitted into the record. The applicant states that he may have made mistakes in the documentation and in his testimony before immigration officials because his English was not good. He states that he lived and worked in many places and did not materially misrepresent a material fact. He states that the evidence establishes that he is entitled to status as a special agricultural worker.

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).

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.

The applicant's response to the notice of derogatory information does not resolve the inconsistencies of record. Specifically, the applicant stated under oath in an interview before an immigration officer on March 3, 1999 that he first entered the United States in May 1988 and had first lived in Massachusetts and then in New Jersey after a couple of weeks.[1] This directly contradicts the information contained in the Form I-700 and supporting documents. The applicant stated on the Form I-700 under penalty of perjury that his last entry to the United States was on February 5, 1985, that he lived in Florida picking vegetables from March 1985 to June 1985 and from June 1986 to September 1986, and then resided in Danbury, CT from September 1986 until the date of filing the Form I-700. The applicant submitted a Form I-705 Affidavit Confirming Seasonal Agricultural Employment, signed by [redacted], stating that the applicant picked vegetables in Immokalee, FL from March 1985 to June 1985, and in Greenboro, FL from June 1986 to September 1986. The addresses in Danbury, CT from 1986-1993 listed on the applicant's Form I-700 directly contradict his testimony at the adjustment interview in 1999 that he lived in Massachusetts after first arriving to the United States in 1988 and then moved to New Jersey. The information concerning his entry into the United States in 1988 and initial residence in Massachusetts and New Jersey undermines the credibility of the applicant's assertion that he picked vegetables in Florida in 1985 and 1986.[2]

The derogatory information regarding the date of the applicant's initial arrival into the United States in 1988 and residence in Massachusetts and New Jersey directly contradicts his claim of agricultural employment in the United States in 1985 and 1986 in Florida. No evidence of record reconciles these inconsistencies. 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,

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[1] The interview was conducted in English in 1999, as the applicant chose not to bring his own interpreter. The interview was to determine the applicant's eligibility to adjust status to permanent residence based on his marriage to a United States citizen. The Form I-485 application to adjust status was denied after the applicant's spouse withdrew the Form I-130 petition for alien relative.

[2] The applicant also submitted a copy of his Form I-687 application for status as a temporary resident in response to the AAO notice of derogatory information. The applicant indicates on the Form I-687 that he lived in Danbury, CT from April, 1981-February 1990, and worked as a cleaner in Danbury, CT from 1981-1988. He did not list any employment or residence in Florida prior to 1990. This information is also inconsistent with the information on the applicant's Form I-700.

1986. Consequently, he is ineligible for adjustment to temporary resident status as a special agricultural worker.

Beyond the decision of the director, inconsistencies in the applicant's submissions to USCIS indicate that he sought through misrepresentation to procure an immigration benefit under the Act. An alien is inadmissible if he seeks through fraud or misrepresentation to procure an immigration benefit under the Act. Section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i). The AAO finds that the applicant is not admissible to the United States due to his material misrepresentation, and for this additional reason, the application may not be approved.

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