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**U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS2090
Washington, DC 20529-2090**



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

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: **AUG 11 2010**

IN RE:

Applicant:



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.

Elizabeth McCormack
Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application for temporary resident status as a special agricultural worker was denied by the Director, Lincoln Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The director denied the application because the applicant failed to establish that he performed at least 90 man days of qualifying agricultural employment during the eligibility period. This decision was based on adverse information acquired by the former Immigration and Naturalization Service relating to the applicant's claim of employment for [REDACTED]

On appeal, the applicant reaffirms his claim to have performed qualifying agricultural employment under the supervision of [REDACTED]

Whenever an application for special agricultural worker status is denied or the status of a lawful temporary resident is terminated, the alien shall be given written notice setting forth the specific reasons for the denial on Form I-692, Notice of Denial. Form I-692 shall also contain advice to the applicant that he or she may appeal the decision and that such appeal must be taken within 30 days following service of the notification of decision. 8 C.F.R. § 103.3(a)(3)(i). An appeal received after the thirty (30) day period has tolled will not be accepted for processing. 8 C.F.R. § 103.3(a)(3)(iv). Form I-694, Notice of Appeal, shall be used to file the appeal and must be accompanied by the appropriate fee. 8 C.F.R. § 103.3(a)(3)(ii). Whenever a person has the right or is required to do some act within a prescribed period after the service of a notice upon him and the notice is served by mail, three days shall be added to the prescribed period. Service by mail is complete upon mailing. 8 C.F.R. § 103.5a(b).

The director issued the Notice of Denial on July 17, 1991. The appeal was not received until April 7, 1993. The appeal was untimely filed and, therefore, must be rejected.

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 he is otherwise admissible under the provisions of 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 application, Form I 700, the applicant claimed to have performed the following employment: 93 man-days hoeing, picking, pruning, and tying fruit and vegetables for [REDACTED] in Oregon between May 1985 and May 1986.

In support of the claim, the applicant submitted a Form I 705 affidavit purportedly signed by [REDACTED]

In the course of attempting to verify the applicant's claimed employment, the Service acquired information that contradicted the applicant's claim. On April 13, 1990, as part of a plea

agreement, [REDACTED] made a declaration to the United States Attorney's Office and the United States District Court at Portland, Oregon. On September 18, 1990, [REDACTED] made a declaration to the United States Attorney's Office and the United States District Court at Portland, Oregon. Both stated that they did employ approximately 30 people for 90 days or more during the requisite period. They submitted a list of those people's names and the applicant's name did not appear on either list. Both declared that approximately 100 people were employed for less than 90 days during the requisite period. They provided a list of those people's names and the applicant's name was not on the list. Both further declared that all other Forms I-705 signed by [REDACTED] are false.

On February 8, 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 applicant failed to respond to the notice of adverse information.

The director concluded the applicant had not overcome the adverse information, and denied the application. On appeal, the applicant requests reconsideration and a copy of the denial and notice of intent to deny.

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. *United Farm Workers (AFL-CIO)*, Civil No. S-87-1064-JFM (E.D. Cal.).

The fact that [REDACTED] gave the Service a list of people who had worked during the requisite period and the applicant's name was not on the list and she admitted that she provided individuals with false affidavits, directly contradicts the applicant's claim. The applicant has not overcome this adverse evidence. As such, 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 period ending May 1, 1986. Consequently, the applicant is ineligible for adjustment to temporary resident status as a special agricultural worker.

Beyond the decision of the director, the applicant is ineligible for temporary resident status as a special agricultural worker for another reason, his criminal record. An applicant is ineligible for temporary residence if he or she has been convicted of any felony or three or more misdemeanors in the United States. 8 C.F.R. § 210.3(d)(3). According to the evidence in the record, the applicant has the following criminal record:

- Arrested on September 22, 1982 for violation of section 5404 of the Washington Statutes, *driving while under influence of liquor*. On October 20, 1982, convicted of same.
- July 6, 1986, Kennewick Sheriff's Office arrested the applicant and charged him with *DWI*. On July 7, 1986, he was convicted of *DWI* in violation of section 5404 of the Washington Statutes.
- On April 30, 1994, arrested and charged with traffic offense, VC14601.2(a); *red light right turn*, VC 21453(b); *failure to appear*, 853.7 PC.
- On April 30, 1994, arrested on one count of violating 1203.2, *rearrest/revoke probation* and one count of violating section 23152(b) VC, *DUI*.
- Arrested on March 16, 1995 and charged with a violation of section 14601.2(a) VC, traffic offense.
- Arrested on March 21, 1997 and charged with two counts of violating section 273A(B) PC, *cruelty to child*; one count of violating section 23152(a) *DUI*; and one count of *impersonation* in violation of 529.3 PC.
- On January 15, 1996, arrested and charged with *corporal injury of spouse* in violation of 273.5(a) PC and *rearrest/revoke probation* section 1203.2 PC. He was convicted on January 17, 1996 in the Municipal Court at North Orange County, California for the offense of *inflicting corporal injury: spouse* in violation of section 273.5(a) of the California Penal Code. Case docket number 96NM00497.
- Arrested on December 25, 2000 and charged with *child abuse or endangerment* in violation of section 273a(a) of the California Penal Code (PC); *assault on police officer* in violation of section 241(b) PC; and *battery upon an officer* in violation of section 243(b). On December 29, 2000, he was convicted of all counts; section 273a(a) PC *child abuse or endangerment*; 241(b) PC *assault police officer*; section 243(b), *battery upon an officer*; and also of section 1203.2 PC *rearrest/revoke probation*. He was sentenced to 102 days in the county jail. Probation was subsequently revoked twice for failure to complete child abuse treatment program. Case docket number [REDACTED]

The applicant has at least three misdemeanor convictions and is ineligible for temporary resident status for this additional reason.

The applicant was placed in removal proceedings on July 29, 2010. He is scheduled for a Master Calendar hearing on August 19, 2010.

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