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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**



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Date:

APR 13 2011

Office: MEMPHIS

FILE:

XDA 88 008 2113

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:

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, Memphis Office, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application, finding the applicant failed to establish that he performed at least 90 man days of qualifying agricultural employment during the eligibility period. The director further determined that the evidence the applicant subsequently submitted was contradictory and the applicant had failed to adequately explain the contradictions.

On appeal, counsel for the applicant asserts that the director held the applicant to an excessively high standard of proof.

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 indicated he performed fieldwork in 1976 and 1979. He did not claim any employment during the 1980s on his application.

The applicant submitted the following relevant evidence in support of his claim: two affidavits from [REDACTED] and one affidavit from [REDACTED] of Central Beverage:

- An affidavit of [REDACTED] dated June 30, 2010, stating the applicant worked for him during 1984, 1985 and 1986.
- An affidavit of [REDACTED] dated May 19, 2008, stating the applicant worked for the affiant from 1984 to 1986 in the months of April, May and June, in the cantaloupe and onion fields.
- A letter from [REDACTED] of Central Beverage, Inc., stating the applicant worked for Central Beverage from March 30, 1984 to August 30, 1984 and from December 31, 1985 to August 28, 1986. The record does not reflect that this employment was qualifying agricultural employment.

The applicant testified on May 15, 2009 that he worked for [REDACTED], picking melons and watermelons for four years, from 1984 through 1986. He also stated that he did not list employment on his Form I-700 application because he was told it was not needed then. He further stated that he alternated working in the city and on the farm on a monthly basis.

In an affidavit dated 2010, [REDACTED] stated that the applicant worked for him during 1984, 1985, and 1986 but that he no longer had employment records. [REDACTED] stated that the

applicant worked in his cantaloupe, onion and watermelon fields, cultivating and picking produce. The applicant indicated that he worked only in the melon fields for [REDACTED] [REDACTED] indicated that the applicant worked in melon, onion and cantaloupe fields in April, May and June, a three-month period.

The applicant indicated that he picked melons in March of each year for approximately 20 days.

The director cited the Texas Department of Agriculture's website, which states cantaloupe are picked from May through November, a seven-month period.

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.). There are numerous discrepancies in the evidence and the applicant failed to resolve these. The employers failed to state the basis of their information. Mr. Armendariz stated that he destroyed employment records every five years. He failed to indicate the basis of his recollection of the applicant's employment.

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.

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