



U.S. Citizenship
and Immigration
Services

L4



FILE:



Office: California Service Center

Date:

OCT 05 2005

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

Identifying data deleted to
protect privacy of unreported
information of personal history
PUBLIC COPY

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, Director
Administrative Appeals Office

DISCUSSION: The application for temporary resident status as a special agricultural worker was denied by the Director, Western Service Center. The matter was remanded by the Legalization Appeals Unit (LAU). The application was then denied by the Director, California Service Center, and again the LAU remanded the matter. The application was denied once more by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The initial denials were based on the applicant's failure to establish the performance of at least 90 man-days of qualifying agricultural employment during the eligibility period. However, the final denial was based on the applicant's failure to report to an office of Citizenship and Immigration Services (CIS) for fingerprinting. In rebuttal to the last denial, the applicant explains that mail was not forwarded to her by an individual that she had entrusted, and therefore she did not receive the notice to appear for fingerprinting until it was too late. She expresses her willingness to appear for the required fingerprinting.

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 harvested oranges and olives for 93 days for Martinez Trucking between August 1985 and January 1986. Although the application directs an applicant to indicate her agricultural employment that took place from May 1, 1983 through May 1, 1986, the applicant claimed only that one relatively brief period of farm work.

In support of the claim, the applicant submitted a corresponding Form I-705 affidavit seemingly signed by [REDACTED], which differed from the application only by indicating that the applicant worked from May 1, 1985 to May 1, 1986. The applicant later submitted another Form I-705 affidavit from Mr. [REDACTED] and a notarized statement from Mr. [REDACTED] showing a monthly breakdown of the days the applicant worked.

The Director, Western Service Center, denied the application upon concluding that the purported signature of [REDACTED] on the affidavits was not authentic. The applicant responded by providing a new affidavit from [REDACTED] written as a form letter with the applicant's name entered, stating that she did indeed work for him and that the original affidavits bore his signature and were therefore valid affidavits. The applicant also furnished two "fill-in-the-blank" affidavits from [REDACTED] and [REDACTED] who attested to the applicant's employment for Mr. [REDACTED].

The LAU remanded the matter, finding that the director had not conclusively established that the signatures of Mr. [REDACTED] were forged, but giving the director the opportunity to pursue the matter further.

The Director, California Service Center, later denied the application, finding that the applicant had failed to respond to a new notice of intent to deny, which requested specific information about [REDACTED] and [REDACTED] Trucking. However, the LAU remanded the matter again and noted that the director still had not acquired adverse evidence regarding Mr. [REDACTED] and had not contacted him and ascertained whether he actually employed workers in qualifying agricultural services.

The director then sent a notice to the applicant advising her to appear for fingerprinting at a local CIS office. The applicant did not receive the notice, because she had moved and entrusted an immigration consultant to provide the updated address to CIS. The director denied the application for lack of fingerprints, and returned the record to the AAO with the appeal pending.

On October 3, 2005 the applicant gave a sworn statement to an officer of U.S. Immigration and Customs Enforcement regarding her immigration history. The officer's questions and the applicant's answers, which related to possible performance of agricultural work in 1985-86, were as follows:

Q. Had you lived in the United States before 2001?

A. Yes.

Q. When did (sic) live in the United States before?

A. I entered in 1988.

Q. Were you in the United States or did you work before 1988.

A. No.

Q. What did you do from 1988 to 1996?

A. I didn't work. I worked in a clothes factory in Los Angeles for only two months.

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).

The applicant's recent sworn statement makes it clear that she was almost never attached to the workplace in the United States for many years, and was not even in the United States during the 1985-86 period. In her own words, she has contradicted her special agricultural worker claim to have worked in the United States for [REDACTED] from August 1985 to January 1986.

In light of the applicant's statement, the documentary evidence originally submitted by the applicant cannot be considered as having any probative value or evidentiary weight. The applicant has, therefore, failed to 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.