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L4

FILE:



Office: CALIFORNIA SERVICE CENTER

Date: SEP 16 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

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the service center that processed 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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

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 Regional Processing Facility for Group 1 eligibility, remanded by the Legalization Appeals Unit (LAU), now the Administrative Appeals Office (AAO) and denied again by the Director, Western Service Center for Group 2 eligibility. The matter is now before the AAO on appeal. The appeal will be dismissed.

The facility director denied the application for Group 1 eligibility because the applicant failed to establish the performance of at least 90 man-days of employment during the first and second Group 1 twelve-month statutory periods ending May 1, 1984 and May 1, 1985. The center director denied the application for Group 2 eligibility because the applicant failed to establish the performance of at least 90 man-days of qualifying agricultural employment during the eligibility period. This decision was based on adverse information regarding the applicant's claim of employment for [REDACTED] under [REDACTED].

On appeal from the facility director's decision, the applicant indicated that he would submit a brief within thirty (30) days. To date, no brief has been forthcoming.

A Group 1 special agricultural worker is a worker who has performed qualifying agricultural employment in the United States for at least 90 man-days in the aggregate in each of the twelve-month periods ending May 1, 1984, 1985, and 1986, and has resided in the United States for six months in the aggregate in each of those twelve-month periods. 8 C.F.R. 210.1(f)

A Group 2 special agricultural worker is a worker who during the twelve-month period ending on May 1, 1986, has performed at least 90 man-days in the aggregate of qualifying agricultural employment in the United States. 8 C.F.R. 210.1(g)

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 performed 93 man-days of qualifying agricultural employment for farm labor contractor [REDACTED] at Christopher Ranch in Santa Clara, California from May 20, 1985 to August 31, 1985.

In support of the claim, the applicant submitted a corresponding Form I-705 affidavit signed by [REDACTED] who indicated that he was a foreman for [REDACTED].

In attempting to verify the applicant's claimed employment, the Immigration and Naturalization Service, or the Service (now, Citizenship and Immigration Services, or CIS) acquired information which contradicted the applicant's claim. Specifically [REDACTED] personnel manager for [REDACTED] provided the Service with a letter, stating that Scotts Cotton Pickers were contracted by [REDACTED] for only 20 man-days in 1985, and not at all during 1986. The letter also stated that there are no employment records for [REDACTED].

On November 15, 1989, the application was denied for Group 1 eligibility. Subsequently, the application was remanded for consideration of the applicant's Group 2 eligibility.

On October 29, 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. In response, the applicant submitted a photocopied letter from [REDACTED] (with original signature), who stated that he worked for [REDACTED] from May 20, 1985 to August 31, 1985. [REDACTED] stated that he was paid in cash and that no documents were available. However, the statement is conflicting because the letter is overlaid with a copy of a 1985 Form W-2 Wage and Tax Statement [REDACTED] Labor Contractor to [REDACTED]. The applicant also submitted a form affidavit signed by [REDACTED] indicating that the applicant worked for him from May 1985 to August 1985.

The director concluded the applicant had not overcome the derogatory evidence, and denied the application on March 10, 1992. The record does not contain a response to the Notice of Decision.

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

Officials at [REDACTED] have stated that [REDACTED] only worked for them for 20 man-days during 1985. In light of this, the documentation submitted by the applicant claiming employment [REDACTED] cannot be deemed credible. Further, in these documents Mr. [REDACTED] makes no reference to where he worked for [REDACTED] or where the applicant worked for him. Therefore, they are not amenable to verification of employment. Thus, the applicant has failed to overcome the adverse evidence, which directly contradicts his employment claim. Therefore, the documentary evidence submitted by the applicant cannot be considered as having any probative value or evidentiary weight.

The applicant has, therefore, 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, 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.