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FILE: [REDACTED]
XMA-89-005-6078

Office: VERMONT SERVICE CENTER

Date: JUL 18 2006

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:



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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: This matter is an application for temporary resident status as a special agricultural worker denied by the District Director, New York, New York, then remanded by the Legalization Appeals Unit (LAU), now the Administrative Appeals Office (AAO) and the denied again by the Director, Eastern Regional Processing facility. The matter is now before the AAO on appeal. The appeal will be dismissed.

The directors 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 determination was based on adverse information acquired by the Service regarding the applicant's claim of employment for Superior Farms.

On appeal from the initial decision, the applicant, through counsel, reaffirmed his claimed employment and submitted additional evidence to support his claim.

On appeal from the final decision, the applicant submitted a brief from counsel.

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 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 Form I-700, the applicant claimed to have performed 120 + man-days harvesting, weeding and planting strawberries from September 1985 to April 1986 for James Bosley at Superior Farms in the city of Fontana, San Bernardino County, California.

In support of the claim, the applicant submitted an "Affidavit General" employment statement purportedly signed by James Bosley, "farm owner", and co-signed by Joseph Johnson, "farm supervisor," and Tiffany Clark, "farm administrator" of Superior Farms. The applicant also submitted a Form I-705 affidavit. and copies of weekly time cards, all signed by Joseph Johnson, "farm supervisor" of Superior Farms. The applicant also submitted a Form I-705 affidavit signed by Mr. Johnson..

In the course of attempting to verify the applicant's claimed employment, the Service acquired information which contradicted the applicant's claim. James B. Bosley, in a letter to the Service dated June 8, 1989, stated he was a co-owner of the property which the applicant has referred to as "Superior Farms". Mr. Bosley stated that no one ever lived at the address [REDACTED] except his own immediate family. The property consisted of a large home with a small shed (an abandoned tack house). Mr. Bosley further stated they have never had any farm workers or immigrants of any kind on the property as claimed. Mr. Bosley stated he has never signed any affidavits to attest to the fact that any agricultural workers qualified for the Special Agricultural Worker Program.

In addition, on January 11, 1990, James R. Bosley, the son of James B. Bosley, during a telephone conversation with Service investigators stated there was never a "Superior Farm" in Fontana, California. He said the name was created by persons who used his name and business address to falsify employment verification documents. He further stated the address at [REDACTED] property owned by him and his father. However, there have never been any farmworkers or immigrants living at this address. Finally, he stated the signature of James Bosley on the "Affidavit General" is fraudulent.

On February 21, 1989, the district director denied the application based on adverse evidence acquired by the Service regarding the applicant's claimed employment. The applicant submitted a photocopied letter from Joseph Johnson, who stated he was farm supervisor at Superior Farms from 1982 through 1986, that the housing where the employees stayed was destroyed by fire in 1988 and that most of the farm records were burned. The applicant also submitted a photocopied map and a photocopied page of a fire report, which reflected that on September 28 (year not specified) 15 acres of brush and vegetation burned at an unspecified location.

On July 20, 1990, the LAU remanded the case at the request of the director.

The application was reopened and on August 1, 1990. The applicant was advised in writing of the adverse information obtained by the Service, and the Service's intent to deny the application. The applicant was granted thirty days to respond. In response to the notice, the applicant submitted a statement from counsel, who reaffirmed the applicant's employment, attesting to the applicant's having received his paperwork from Joseph Johnson and indicating that the applicant cannot imagine why James Bosley would make false statements regarding the farm and its employees. The applicant indicated that Mr. Bosley may have been intimidated by the Service into making such an "outrageously inaccurate story." The applicant submitted a personal affidavit in which he stated that he worked on the farm for James Bosley, under Joseph Johnson, and stayed in one of two bungalows located on the property. The applicant stated that the actual fields he worked were not located [REDACTED] but in Pomona, Ontario, and Montclair, California.

The facility director determined that the applicant had not overcome the adverse information, and denied the application on November 15, 1990. On appeal, counsel states that the applicant has submitted substantial evidence tending to prove that he worked as a farm laborer from September 1985 to April 1986. Counsel states that the applicant cannot imagine why Mr. Bosley lied about the presence of "SAW" workers on his property. Counsel states that it appears that relentless badgering and intimidation by over zealous Service agents on a phony farm witch-hunt has compelled Mr. Bosley to appease them with an outrageously inaccurate story.

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.

James R. Bosley stated there was never a "Superior Farm" in Fontana, California. He said the name was created by persons who used his name and address to falsify employment verification documents. He further stated the address at [REDACTED] is property owned by him and his father. He further asserted that there have never been any farmworkers or immigrants living at this address. Finally, he stated the signature of James Bosley on the "Affidavit General" is fraudulent.

Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506, (BIA 1980).

The applicant's claim to eligibility rests solely on the attestations of Joseph Johnson, who claims to have been a foreman at Superior Farms. James Bosley stated that there had never been any farm workers on his property. Mr. Johnson stated that the two bungalows where the workers stayed burned in 1988. However, as corroborating evidence he submits a fire report addressing a fire where only 15 acres of brush was burned. Outside of Joseph Johnson's testimony, the applicant has produced no evidence to establish the existence of a Superior Farms or that he performed qualifying agricultural employment during the qualifying period. Every aspect of the applicant's claim has been refuted by the Bosleys.

The adverse information obtained by the Service regarding the applicant's alleged employment at Superior Farms directly contradicts the applicant's claim. The applicant has not overcome this adverse information. 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.

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