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U.S. Citizenship  
and Immigration  
Services

LI

[REDACTED]

FILE:

[REDACTED]

Office: NATIONAL BENEFITS CENTER

Date: APR 17 2007

XRO 89 038 04052

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:

[REDACTED]

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. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application for temporary resident status as a special agricultural worker was denied by the Director, Northern Regional Processing Facility, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director denied the application 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]

On appeal, counsel argues that the applicant had submitted sufficient evidence to establish that he had performed seasonal agricultural services during the qualifying period and that additional information was unwarranted and an abuse of discretion. Counsel asserts that the applicant had attempted to obtain information, however, "due to the contractors [sic] refusal to cooperate," the applicant cannot submit any additional information at this time.

The applicant's Freedom of Information Act request was complied with on November 29, 1995.

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 100 man-days of qualifying agricultural employment for [REDACTED] at [REDACTED] Farm/Gardening in Utah from May 15, 1985 to October 25, 1985.

In support of the claim, the applicant submitted a Form I-705 affidavit and a separate employment letter, both signed by [REDACTED] who identified himself as the owner of [REDACTED] Farm/Garden & Landscape in Salt Lake, Utah.

In attempting to verify the applicant's claimed employment, the legacy Immigration and Naturalization Service (INS) acquired information which contradicted the applicant's claim. Specifically, on November 8, 1989, [REDACTED] admitted that all the affidavits confirming seasonal agricultural employment he signed were fraudulent. Mr. [REDACTED] also admitted that he did not commence any agricultural activity until March 1986.

On May 7, 1992, the applicant was advised in writing of the adverse information obtained by the legacy INS, and of its intent to deny the application. The applicant was granted thirty days to respond. In response, counsel asserted that the applicant "has attempted to obtain the information, however, due to the contractors refusal to cooperate, [the applicant] cannot at this time submit the requested information." Counsel further asserted that the applicant would submit the information if the contractors and farmers provided it voluntarily.

The director concluded the applicant had not overcome the derogatory evidence, and denied the application on September 21, 1992. On appeal, counsel contends that the applicant can provide an affidavit from his brother, who also worked with [REDACTED] during the period in question. Counsel claims that [REDACTED] statement was self-serving so as to avoid a length prison sentence.

Counsel's claim amounts to speculation and without documentary evidence to support such claim, the assertion of counsel will not satisfy the applicant's burden of proof. The unsupported assertion of counsel does not constitute

evidence. *Matter of Obaigbena*, 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).

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. [REDACTED] (E.D. Cal.).

The employment claim which the applicant subsequently chose to document has been discredited by the adverse evidence detailed above. The applicant has failed to overcome this adverse evidence, which directly contradicts his employment. 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.