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FILE:

[REDACTED]
XAH 88 138 08055

Office: CALIFORNIA SERVICE CENTER

Date: **AUG 30 2007**

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. 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, Western Service Center, and is now before the Administrative Appeals Office (AAO) 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 acquired by the legacy Immigration and Naturalization Service (INS) relating to the applicant's claim of employment for [REDACTED]

On appeal, counsel requested a copy of the record of proceedings. Counsel asserted that a brief would be submitted within 30 days after receipt of said proceedings. On June 6, 2004, the director sent a copy of said proceedings to the applicant's address of record. In response, counsel asserted that the applicant had attempted, but was unable to locate [REDACTED] as he was informed that the affiant had died.

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 Immigration and Nationality 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 a total of 110 man-days of qualifying agricultural employment for [REDACTED] at various ranches in San Joaquin County, California, from May 1, 1985, to January 16, 1986.

In support of his claim, the applicant submitted a corresponding Form I-705 affidavit and a separate employment letter, both signed by foreman [REDACTED]. [REDACTED] indicated that the applicant worked 110 man-days at various farms in San Joaquin County, California.

In attempting to verify the applicant's claimed employment, the legacy INS acquired information causing it to question the applicant's claim. On November 22, 1988, [REDACTED], personnel/payroll officer for M & R Ranches, informed the Service that [REDACTED] had never worked for M & R Ranches. On December 21, 1988, [REDACTED], payroll officer for Panella Ranch, informed the Service that [REDACTED] had never worked for Panella Ranch. The record, however, does not indicate the applicant had claimed to have worked at Panella Ranch or M&R Ranches. It appears the legacy INS had information indicating [REDACTED] had claimed to work for these ranches during the requisite period.

On January 28, 1991, the applicant was advised in writing of its doubts regarding the authenticity of [REDACTED]'s affidavit, and of its intent to deny the application. The director also referred to claims by the applicant to have worked for [REDACTED] at Panella Ranch or M&R Ranches that are not found in the record. The applicant was granted thirty days to respond to the notice. In response, the applicant submitted a copy of a letter, purportedly signed by [REDACTED], indicating he had employed [REDACTED] at M & R Packer, Panella Ranch, and Maywood Orchard during the eligibility period. The director determined that the signatures on the applicant's documents did not appear to match exemplars on file and, therefore, were not authentic.

On September 11, 1991, the applicant was advised in writing of additional adverse information obtained by the legacy INS, and of its intent to deny the application. Specifically, [REDACTED] and his spouse [REDACTED] provided a list of employees for whom they provided employment verification. The applicant's name did not

appear on the list. The director determined that the signatures on the applicant's documents did not appear to match exemplars on file and, therefore, were not authentic. The applicant was also advised again of the adverse information obtained from [REDACTED] of M&R Ranches and [REDACTED] of Panella Ranch.

The director concluded the applicant had not overcome the derogatory evidence, and denied the application on November 12, 1991.

Subsequently, the legacy INS discovered additional derogatory information which further undermined the credibility of the applicant's claim and documentation. Specifically, on January 3, 1989, [REDACTED] informed the legacy INS that he did not employ [REDACTED] during the eligibility period. [REDACTED] explained that [REDACTED] worked for him in 1981 or 1982 and not again until 1987.

The applicant was advised of this additional derogatory information by the AAO on March 1, 2007,¹ and granted 30 days to respond. However, to date, neither the applicant nor counsel has responded to the notice.

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.).

The signatures of [REDACTED] appearing on the employment documents were notarized, theoretically indicating that he demonstrated his identity during that process. It is concluded that, in the absence of a forensic examination which indicates the signatures are not authentic, this not a valid basis for denial.

Although [REDACTED] claims to have worked at Panella Ranch and M & R Ranches have been called into question, there is nothing in the record indicating the applicant ever claimed to have worked at these ranches. However, the evidence raises questions regarding [REDACTED]'s credibility in general. The applicant's claim of 110 days of employment at "various ranches" lacks sufficient detail to establish his eligibility. Further, this claim is supported entirely by the testimony of [REDACTED], whose credibility as an affiant has been compromised by the adverse evidence obtained by the legacy INS. Therefore, the documentary evidence submitted by the applicant cannot be considered as having any probative value or evidentiary weight.

The applicant has failed to establish credibly 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.

¹ Counsel was advised of this additional derogatory information on June 1, 2007.