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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
XCA 89 013 1077

Office: CALIFORNIA SERVICE CENTER

Date: FEB 16 2007

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Temporary Resident Status under 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. 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.

2 Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Western Regional Processing Facility, denied the application for status as a temporary resident under section 210 of the Immigration and Nationality Act (Act). The director reopened the case and issued a notice of intent to deny and informed the applicant of derogatory information. The director issued a new denial. The matter 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 Service relating to the applicant's claim of employment for farm labor contractor [REDACTED] at the [REDACTED] farm.

The applicant submitted an appeal.

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 I-700 application, the applicant claimed to have worked for farm labor contractor [REDACTED] at the [REDACTED] farm for 45 man-days cutting melons in the period between May 1985 and July 1985. The applicant claimed to have worked for [REDACTED] at Early Riser Harvesting for 75 man-days thinning and weeding lettuce in the period between September 1985 and December 1985.

In support of his claim, the applicant submitted a Form I-705 affidavit from [REDACTED]

In the course of attempting to verify the applicant's claimed employment, the Service contacted [REDACTED], office personnel clerk at [REDACTED] farm. Ms. [REDACTED] stated that [REDACTED] was not employed at the [REDACTED] farm during the qualifying period. The applicant also claimed 75 man-days of employment with Early Riser Harvesting, less than the required 90 man-days.

The applicant failed to respond to the director's notice of adverse information; therefore, the director denied the application on June 4, 1991. On appeal, the applicant submitted the name of an individual whom he said qualified for SAW status on the basis of the same evidence he had submitted. He also submitted an affidavit from this individual, [REDACTED] Mr. [REDACTED] failed to include evidence that he obtained SAW status. Even if he had, the AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

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.

The derogatory information obtained by the Service regarding the applicant's claimed employment for [REDACTED] contradicts the applicant's claim. The adverse information obtained regarding farm labor contractor Antonio Serrano undermines the credibility of the applicant's claim. The applicant has not overcome such derogatory evidence.

The applicant has the burden of proof to establish his eligibility by a preponderance of the evidence. 8 C.F.R. § 210.3. The applicant has 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.