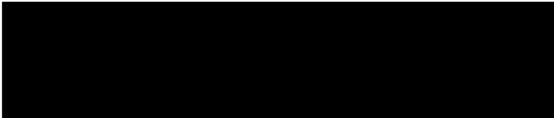


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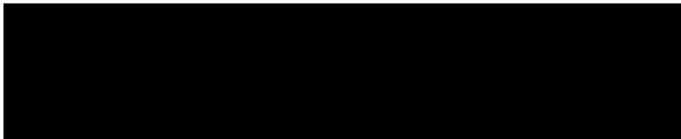


Office: NEBRASKA SERVICE CENTER

Date:

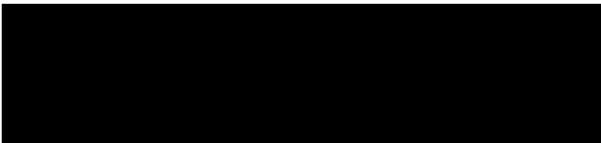
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Applicant:



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:



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.

A handwritten signature in cursive script that reads "Mai Johnson".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Regional Processing Facility denied the application for status as a temporary resident under section 210 of the Immigration and Nationality Act (Act). The applicant timely appealed to the Administrative Appeals Office (AAO). The director issued two subsequent requests for additional information. 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 (now Citizenship and Immigration Services or CIS) relating to the applicant's claim of employment for farm labor contractor [REDACTED]. [REDACTED] was convicted on three counts of violating federal law because he was directly involved in the sale of fraudulent employment affidavits for use in making applications for temporary resident status under the Special Agricultural Worker program in violation of 8 U.S.C. § 1160(b)(7)(A). (Case No. CR90-0469).

The applicant, through counsel, submitted a timely 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 [REDACTED] for 96 man-days weeding soybeans between May 1985 and September 1985.

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

In the course of attempting to verify the applicant's claimed employment, Service officers interviewed [REDACTED] on September 27, 1989. [REDACTED] stated, under oath, that he used farm laborers to work soybeans for approximately one week between July 1st and August 1st. [REDACTED] further stated that [REDACTED] worked for him in 1985 and 1986. Finally, [REDACTED] indicated that he signed a partially completed Form I-705 affidavit at [REDACTED]'s behest. According to the evidence in the record, a copy of the applicant's file was provided to the U.S. Attorney's office for the District of Nebraska for use in the successful prosecution of [REDACTED] for violation of 8 U.S.C. § 1160(b)(7)(A).

On March 11, 1992, the director notified the applicant of the adverse information stemming from the interview with [REDACTED]. The applicant failed to respond.

On August 11, 1992, the director denied the application. On appeal, the applicant submitted an affidavit from [REDACTED] which states that she and the applicant worked together in the fall of 1985 cutting cabbage and broccoli and again in the spring of 1986 picking melons. On December 1, 1992, the director

requested that the applicant provide the total number of man-days that he and [REDACTED] worked during the qualifying period. On September 24, 1993, the applicant's attorney submitted a brief and three new affidavits. Counsel claimed that the applicant had submitted sufficient evidence to establish his eligibility, that "the affidavit signed by [REDACTED] is verifiable," and that "it is highly probable that [the applicant] not only did work on Gerdes Farm but also worked on other farms under the employ of [REDACTED]." On October 18, 1993, the director issued another notice of adverse, reminding the applicant of the specific adverse information stemming from the interview with [REDACTED] and noting the contradictory information in the record. The director also noted that the new affidavits did not establish that the applicant performed qualifying employment because each affiant simply stated that the applicant "told" the affiant that he had performed the qualifying work. None of the affiants claimed to have worked with the applicant or to otherwise have direct knowledge of the work performed. On November 24, 1993, the applicant's attorney requested an additional 30 days in which to respond, but submitted nothing further.

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 [REDACTED] 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.

Beyond the director's decision, the AAO notes that evidence in the applicant's A-file reveals that the applicant attempted to enter the United States on May 10, 2001 by making a false claim to U.S. citizenship in order to gain admission into the United States. Accordingly, the applicant is inadmissible pursuant to section 212(a)(6)(C)(ii) of the Act, 8 U.S.C. § 1182(a)(6)(C)(ii). For this additional reason, the application may not be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

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