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U.S. Citizenship
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Services

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FILE:

[REDACTED]
XSI 89 509 2068

Office: CALIFORNIA SERVICE CENTER

Date: JAN 24 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:

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.

Maui Johnson

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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 Reform and Control Act of 1986. 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, in part, on adverse or conflicting information acquired by the Service relating to the applicant's claim of employment for [REDACTED] and [REDACTED]

The applicant 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] of VIP for 120 man-hour days irrigating grapes, tying grape vines and performing site preparation in the period between May 1985 and May 1986.

In support of her claim, the applicant submitted a Form I-705 affidavit and a letter from [REDACTED] of VIP. [REDACTED] wrote that the applicant worked for VIP between September 2, 1985 to March 13, 1986 performing site preparation, staking, planting, tying, and training of new vines. She also submitted time sheets.

In the course of attempting to verify the applicant's claimed employment, Service officers determined that VIP did not exist and that some of the applicant's claimed employment did not qualify because it was not a "seasonal agricultural activity." Specifically, site preparation, i.e., pulling boulders out of the ground is not a "seasonal agricultural activity."

On May 11, 1989, the director issued a notice of intent to deny and notified the applicant of adverse or conflicting information. The Service had contacted several government offices including the county recorder, and [REDACTED] aka [REDACTED] all of who stated that VIP did not exist. Further the director informed the applicant that the job duties of site preparation and irrigation installation are not seasonal agricultural services. Further, the director informed the applicant that at an interview, she had failed to establish that she had any knowledge of how the tasks of site preparation and irrigation installation are accomplished.

On June 14, 1989, the director denied the application and made a finding of fraud.

On appeal, the applicant requested a copy of the record of proceedings (ROP) and stated she would file her brief within 30 days of receipt of the record of proceedings. On October 12, 1990, the director responded to the applicant's request for a copy of the ROP and sent it to her address of record. However, the response was returned to sender as unclaimed.

On October 26, 2006, this office advised the applicant again of adverse information and gave her an opportunity to respond to the derogatory evidence. More than 2 months have lapsed and nothing more was submitted to the record.

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 VIP contradict the applicant's claim. The adverse information obtained 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.