



U.S. Citizenship
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Services

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LI

FILE: [REDACTED]
XPH 88 127 01054

Office: CALIFORNIA SERVICE CENTER

Date: JUN 07 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. 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 District Director, Phoenix, Arizona and reopened by the Director, Western Service Center. The case was remanded by Administrative Appeals Office (AAO). The Director, California Service Center, withdrew the decision, reopened the proceedings, and denied the application again. The matter is now before the AAO on appeal. The appeal will be dismissed.

The directors denied the application because the applicant admitted at his interview that he had not performed the agricultural employment he had initially claimed on his application.

On appeal from the district director's decision, the applicant reasserted the veracity of his claim. The applicant asserted that at the time of his interview, he informed the interviewing officer that "my mother was the one that requested the letter and picked it up because I was working." The applicant stated that he did not purchase the employment documents.

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, provided he is otherwise admissible under section 210(c) of the Immigration and Nationality Act and is 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 117 man-days harvesting "green leafs" and cantaloupes from October 25, 1985 to April 12, 1986 for [REDACTED] at various farms in Maricopa County, Arizona. In support of the claim, the applicant submitted a Form I-705 affidavit and an employment letter, both purportedly signed by [REDACTED]

According to the interviewing officer's notes, at the time of his interview, the applicant admitted he did not work for [REDACTED] and that his mother had purchased the employment documents in order for him to qualify for the benefit being sought.

On April 17, 1992, the Director, Western Service Center, withdrew the previous decision, reopened the proceedings and issued a Notice of Intent to Deny. The applicant was advised that on August 8, 1991, [REDACTED] executed a sworn statement before Service officers regarding employment documentation submitted by applicants seeking benefits under the special agricultural worker program which contained his name as the affiant. The sworn statement signed by [REDACTED] included three lists of individuals with their accompanying birthdates and A-file numbers. The first list consisted of those individuals who actually worked for him for at least 90 man-days during the qualifying period; the second list consisted of individuals to whom he sold documents but had no knowledge of these applicants' work experience; and, the third list, as verified by [REDACTED] consisted of individuals whose employment documents contained fraudulent signatures of himself as the affiant, as he had not provided these documents to the individuals in question and had no knowledge of their work experience. The applicant's name appeared on the second list of individuals.

The notice, however, was returned by the post office as unclaimed. On May 19, 1992, the director denied the application.

On September 25, 2001, the case was remanded by the AAO as the 1992 notices were sent to the applicant's old address even though the record contained a new address and there was no evidence that said notices were re-mailed to the applicant's new address.

On August 30, 2006, the Director, California Service Center, withdrew the previous decision, reopened the proceedings and issued a new Notice of Intent to Deny, which advised the applicant of his statement made at the time of his interview. The applicant was granted thirty days to respond. The applicant, however, failed to respond to the notice. The director concluded the applicant had not overcome the derogatory evidence, and denied the application on January 4, 2007.

The applicant has not addressed the subsequent decision nor provided any evidence to overcome the center director's findings.

In order to be eligible for temporary resident status, an alien must have engaged in qualifying agricultural employment for at least 90 man-days during the twelve-month period ending May 1, 1986. In this case, the applicant has admitted that he did not perform the requisite employment during the qualifying period. The applicant's statements made on appeal have been considered. However, there is no waiver available, even for humanitarian reasons, of the requirements stated above. As the applicant has not demonstrated eligibility for the benefit sought, the appeal must be dismissed.

Finally, it is noted that the FBI report dated August 9, 2006, reflects that the applicant was arrested by the Phoenix Police Department for felony driving while intoxicated on January 12, 1993. However, said offense was not referred for prosecution.

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