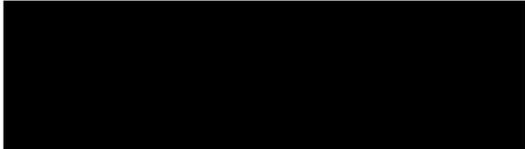


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MAR 07 2007

FILE:



XSA 88 565 05035

Office: CALIFORNIA SERVICE CENTER

Date:

IN RE:

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: 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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, reopened, and denied again by the Director, California Service Center. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The directors 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] at Rio Bravo Ranch.

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 Form I-700 application, the applicant claimed to have worked 100 man-days picking citrus fruits for farm labor contractor [REDACTED] at Rio Bravo Ranch in Kern County, California from August 1985 to March 1986.

In support of the claim, the applicant submitted a corresponding Form I-705 affidavit and a separate employment statement, purportedly signed by [REDACTED]

According to the interviewing officer's notes, the applicant did not know anything pertaining to agriculture, did not know where Rio Bravo was located, and was unable to state the type of oranges he picked.

On April 4, 1991, the applicant was advised in writing of the adverse information obtained by the legacy INS and of its intent to deny the application. Specifically, the payroll secretary of Nickel Enterprises, parent company of Rio Bravo Ranch, stated that [REDACTED] contract expired in January 1986. The director also noted that the purported signature of [REDACTED] on the employment documents did not appear to resemble his authentic signature, seemingly casting further doubt on the credibility of the affidavits.

In response, the applicant reasserted the veracity of his employment claim for [REDACTED]. Subsequently, on July 18, 1991, the director denied the application. On appeal, the applicant submitted a copy of his statement submitted in response to the Notice of Intent to Deny and requested additional time to acquire evidence in support of his claimed employment.

In a further attempt to verify the applicant's claimed employment, the legacy INS acquired additional information which contradicted the applicant's claim. The payroll secretary of Nickel Enterprises, parent company of Rio Bravo Ranch, stated that [REDACTED] contract expired in January 1986 and that [REDACTED] did not provide any workers after that date. This information has since been corroborated by the operations manager of Nickel Enterprises, who asserted that [REDACTED] employment at Rio Bravo Ranch's farming operations ended January 15, 1986.

In addition, [REDACTED] provided the legacy INS with the names of individuals to whom he issued employment verification documents along with exemplars of his signature. The legacy INS acquired photocopies of the labor receipts submitted to Rio Bravo Ranch by [REDACTED]. The applicant's name did not appear on the lists provided by [REDACTED] and the signatures on the employment documents did not match the exemplars provided by [REDACTED]

On October 19, 2001, the director withdrew his previous decision, reopened the proceedings for review, and issued a new intent to deny notice. The applicant was advised in writing of the adverse information noted above obtained by the legacy INS. The applicant was granted thirty days to respond. In response, the applicant submitted a revised Form I-705 and employment letter from [REDACTED] who attested to the applicant's employment at Rio Bravo Ranch from October 10, 1985 to January 12, 1986, and at Anxious Acres from January 13, 1986 to March 19, 1986. [REDACTED] asserted that "Rio Bravo is a geographic description used for many different farms located in that area, i.e., Nickel Enterprises, Geohring Citrus, Anxious Acres and many more."

The director, in denying the application, noted that the applicant's claim was not amenable to verification as neither [REDACTED] nor the applicant provided documentation attesting to another worksite until the applicant was advised of the adverse information. In addition, [REDACTED]'s credibility was called into question as the affiant failed to state how he could accurately set forth such information after an extended period of time since the alleged work was performed. The director concluded that applicant had not overcome the derogatory evidence, and denied the application on July 2, 2004. The applicant has not addressed the director's subsequent Notice of Decision.

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 signature of [REDACTED] appearing on the affidavits is not significantly different than the known exemplar of his signature. Furthermore, it is noted that the last affidavit submitted from [REDACTED] was 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.

It is highly consequential that the applicant's claim to have performed at another entity was introduced into these proceedings only *after* damaging information had been obtained regarding the applicant's original claim of having worked solely for Rio Bravo. An applicant raises questions of credibility when asserting a substantially revised claim to eligibility for a benefit which can only be granted by virtue of the revised claim. In such instances, Citizenship and Immigration Services may require credible evidence to support the substantially revised claim as well as a complete explanation concerning the applicant's failure to advance this claim initially. The very purpose of the Form I-700 application is to allow the applicant to claim the qualifying agricultural employment which entitles him to the benefits of status as a special agricultural worker. The applicant provides no explanation as to why his claim to have been employed at Anxious Acres during the qualifying period was not advanced initially or at the time of his interview.

Larger issues of credibility arise when an applicant claims employment which is called into question through a legacy INS investigation, and later attempts to establish eligibility by amending his employment claim in an attempt to satisfy the Notice of Intent to Deny. The applicant's advancement of a new employment claim does not address, resolve, or diminish the credibility issues raised by the adverse evidence as regards the

applicant's initial claim. Therefore, the applicant's overall credibility remains in question. For this reason, the applicant's new claim of employment at Anxious Acres will not serve to fulfill the qualification requirements necessary for status as a special agricultural worker.

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.