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FILE:



XSC 87 199 3026

Office: CALIFORNIA SERVICE CENTER

Date: **MAR 14 2007**

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:



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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for temporary resident status was denied by the Director, Western Service Center. The case was remanded by the Chief, Legalization Appeals Unit (LAU) for consideration of the application as an application for temporary resident status as a special agricultural worker. The Director, California Service Center, subsequently reopened the matter and denied the application again, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reveals that the applicant filed a Form I-687, Application for Status as a Temporary Resident, with the Immigration and Naturalization Service (the Service), now Citizenship and Immigration Services (CIS), on September 3, 1987. In support of the application, the applicant submitted an employment affidavit from [REDACTED] Farming, stating that the applicant worked for him 135 man-days in 1980, 129 man-days in 1981, 111 man-days in 1982, 95 man-days in 1983, 110 man-days in 1984, and 123 man-days in 1985. The applicant also submitted photocopies of his federal income tax returns and his Forms W-2 wage and tax statements from Herman & Ronald L. Ohm for the years 1980 through 1985.

The applicant appeared for his legalization interview at the Legalization Office in Sacramento, California, on September 23, 1987. The eligibility period to file applications for temporary resident under section 210 of the Act had not expired at the time of the applicant's legalization interview. During his interview the applicant told the interviewing officer that, during the period from 1975 to 1985, he came to the United States every year in April or May, worked in the fields, and went back to Mexico in September or October for the winter.

On September 30, 1988, the applicant was requested to submit additional evidence to establish continuous residence in the United States from prior to January 1, 1982 to the filing date of his application. The applicant, in response, submitted a letter from [REDACTED], stating that the applicant worked for him irrigating row-crops during the years 1982 to 1987, omitting 1986. Mr. [REDACTED] stated that the applicant came to work each spring and returned to his home in Mexico each fall at the end of the season. Mr. [REDACTED] submitted photocopies of the applicant's paychecks for the periods from April 18, 1982 through September 16, 1982; from May 22, 1983 through September 3, 1983; from April 8, 1984 through September 7, 1984; from April 26, 1985 through September 9, 1985; and, from August 13, 1987 through October 8, 1987.

The service center director denied the application on January 7, 1991, because he found that the applicant failed to establish continuous residence in the United States from prior to January 1, 1982 to September 3, 1987, the filing date of his application.

On appeal, counsel for the applicant stated that the applicant was incorrectly advised by a Service employee to file a Form I-687 instead of a Form I-700, Application for Temporary Resident Status as a Special Agricultural Worker. Counsel asserted that the applicant was clearly eligible for temporary resident status as a special agricultural worker. Counsel contends that the interviewing officer should have informed the applicant at the time of his legalization interview that he could still file a Form I-700 instead of a Form I-687. Counsel submitted a Form I-700 and a Form I-705

affidavit from [REDACTED] stating that the applicant worked for him seasonally from 1980 to 1990 performing seasonal agricultural work. Counsel also submitted an affidavit dated July 12, 1991, from [REDACTED] stating that he knew the applicant to have been working in agriculture every year from 1975 through 1990. He stated that the applicant used his home address as his mailing address while he was performing seasonal work each year. Mr. [REDACTED] further stated that he translated for the applicant when he went to apply for temporary resident status, and a Service employee at the Sacramento Legalization Office told the applicant that he should apply for temporary resident under section 245a of the Act rather than section 210 of the Act.

On November 22, 2000, the Chief of the LAU remanded the case for consideration of the application for temporary resident status as an application for temporary resident status as a special agricultural worker and issuance of a new decision.

On October 5, 2004, the applicant was mailed a fingerprint appointment notice instructing him to appear at the Portland, Oregon, Application Support Center on October 19, 2004, to be fingerprinted, or to request that his fingerprint appointment be re-scheduled if he was unable to be fingerprinted on that date. The fingerprint appointment was mailed to the applicant's last known address, "[REDACTED]," but the applicant failed to appear for his fingerprint appointment or request another opportunity to be fingerprinted.

On April 14, 2005, the service center director withdrew his previous decision and reopened the case. The director stated that it appeared that the applicant qualified for temporary resident status as a special agricultural worker under Group 1 classification, as an alien who performed seasonal agricultural services in the United States for at least 90 man-days during each of the twelve-month periods ending on May 1, 1984, 1985, and 1986. However, the director denied the application because the applicant failed to appear for his scheduled fingerprint appointment or request another opportunity to be fingerprinted. The director informed the applicant that his appeal was still in effect and granted the applicant 30 days, until May 14, 2005, to submit additional evidence to supplement his appeal. The notice was mailed to the applicant at his latest known address and to counsel at his current address. To date, neither the applicant nor counsel has submitted any additional evidence to supplement the applicant's appeal. Therefore, the application will be considered complete.

Personal testimony by an applicant which is not corroborated, in whole or in part, by other credible evidence will not serve to meet an applicant's burden of proof. All evidence of identity, qualifying employment, admissibility and eligibility submitted by an applicant for adjustment of status under this part will be subject to verification by the Service. 8 C.F.R. § 210.3(b)(3).

In this case, the applicant has failed to appear to be fingerprinted or request another opportunity to be fingerprinted. Without a fingerprint check, the applicant's claim on his application that he has not been convicted or even arrested cannot be verified.

An alien applying for adjustment of status under section 210 of the Act has the burden of proving by a preponderance of evidence that he or she has worked the requisite number of man-days, is admissible to the United States under the provisions of section 210(c) of the Act, 8 U.S.C. § 1255a, is otherwise eligible for adjustment of status, and in the case of a Group 1 applicant, has resided in the United States for the requisite periods: 8 C.F.R. § 210.3(b)(1). Due to his failure to report for the mandatory fingerprinting, the applicant has not met this burden.

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