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U.S. Citizenship
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MAR 22 2007

FILE: [REDACTED]
XEC 88 069 00080

Office: CALIFORNIA SERVICE CENTER

Date:

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 Director, Western Service Center, and remanded by the Administrative Appeals Office (AAO). The Director, California Service Center, reopened, and denied again the application. The matter is now before the AAO on appeal.

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 statutory period. This determination 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 [REDACTED].

On appeal, from the initial decision the applicant reasserted the veracity of his employment claim for [REDACTED] but claimed that he was unable to locate the affiant to obtain further documentation.

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 the alien is otherwise admissible under section 210(c) of the 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 to have weeded, thinned and cut lettuce, asparagus and sugar beets for 106 man-days from May 1985 to May 1, 1986 for [REDACTED] at [REDACTED] in El Centro California.

In support of the claim, the applicant submitted a corresponding Form I-705 affidavit and an employment letter signed by [REDACTED] who identified himself as a foreman/farm labor contractor. The applicant neither claimed nor documented that he performed any other agricultural employment during the eligibility period.

In attempting to verify the applicant's claimed employment, the legacy INS acquired information which contradicted the applicant's claim. Specifically, [REDACTED] was not on the list of foreman provided by [REDACTED] of [REDACTED] who were authorized to verify employment for workers who used aliases. [REDACTED] also stated that employees were paid by check, not cash as indicated on the applicant's Form I-705 affidavit.

On February 24, 1992, the applicant was advised in writing of the adverse information obtained by the legacy INS, and of its intent to deny the application. The applicant was granted thirty days to respond. The notice, however, was returned by the post office as unclaimed. The director concluded that the derogatory evidence had not been overcome, and denied the application on April 22, 1992.

On appeal, the applicant put forth a new employment claim for [REDACTED] during the qualifying period. [REDACTED] indicated that he was a foreman for [REDACTED] Labor Contractors and that the applicant was employed for 108 man-days thinning, weeding and cutting melons and asparagus under the alias, [REDACTED] with social security number, [REDACTED] from January 1986 to April 1986. The applicant claimed that he did initially submit this employment claim because he was unable to locate [REDACTED] to obtain employment documentation.

The case was forwarded to the AAO for review. On March 1, 2001, the AAO remanded the case as the record contained additional adverse evidence which the applicant was not apprised of in the Notice of Intent to Deny.

On November 8, 2004, the director reopened the proceedings and issued a Notice of Intent to Deny. The applicant was advised that [REDACTED] did not employ farm labor contractors and did not produce sugar beets. In addition, [REDACTED] had no record of employment for the applicant and all employees were paid by check. The applicant was granted thirty days to respond. The applicant, however, failed to respond to the notice. The director concluded that the derogatory evidence had not been overcome, and denied the application on March 10, 2005.

On appeal, the applicant, asserts that he is unable to submit any further documentation for his employment with [REDACTED] as he is unable to locate the affiant. The applicant reaffirms his employment with [REDACTED] during the qualifying period and provides a copy of the previously submitted employment letter from [REDACTED].

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).

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.).

An applicant raises serious questions of credibility when asserting an entirely new claim to eligibility on appeal. The applicant contends that he did not initially claim employment with [REDACTED] because he was unable to locate the affiant. However, that does not explain why the applicant did not claim this employment on his Form I-700 application. The instructions to the application do not encourage applicants to limit their claims; rather, applicants are encouraged to list multiple claims, as they are instructed to show the most recent employment first.

Further, as the applicant has not contested the finding that his initial claim was false, his overall credibility is suspect. The applicant's additional claim of employment contradicts his Form I-700 application as he did not claim to have used an alias and the social security number listed on his application does not correspond to the social security number provided by [REDACTED]. Larger issues of credibility arise when an applicant claims employment which is called into question through an investigation, and later attempts to establish eligibility with a different employer, heretofore never mentioned to the legacy INS. For this reason, the applicant's new claim of employment for [REDACTED] will not serve to fulfill the qualification requirements necessary for status as a special agricultural worker.

The applicant's initial claim is lacking in credibility due to the adverse evidence. The applicant has not overcome such derogatory evidence. The validity of the applicant's amended claim on appeal must be deemed questionable at best. Under these circumstances, it cannot be concluded the applicant has credibly established that he performed at least 90 man-days of qualifying agricultural employment during the statutory period ending May 1, 1986. Consequently, the applicant has not demonstrated his eligibility for temporary resident status as a special agricultural worker.

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