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U.S. Citizenship
and Immigration
Services

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MAY 01 2007

FILE: [REDACTED]
XTU 89 286 01010

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:

[REDACTED]

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, remanded by the Legalization Appeals Unit (LAU), now the Administrative Appeals Office (AAO), and denied again by the Western Service Center Director. The matter is now before the 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 on information acquired by the legacy Immigration and Naturalization Service (INS) relating to the applicant's claim of employment for [REDACTED]

On appeal from the initial decision, the applicant submitted additional documentation in support of his appeal.

On appeal from the subsequent decision, the applicant, through counsel, reaffirmed his claimed employment and submitted additional evidence.

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 Immigration and Nationality 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 by a preponderance of the evidence that he or she has worked the requisite number of man-days, is admissible to the United States... and is otherwise eligible for adjustment of status under this section." 8 C.F.R. § 210.3(b). When something is to be established by a preponderance of evidence it is sufficient that the proof only establish that it is probably true. See generally, [REDACTED], Evidence sec. 339 (2d ed. 1972).

On the application, Form I-700, the applicant claimed to have performed 95 man-days of agricultural employment from May 1985 to September 1985 for [REDACTED] in Cochise County, Arizona. In support of the claim, the applicant submitted a Form I-705 affidavit and an employment verification letter, both signed by farm labor contractor [REDACTED]

On March 8, 1991, the director issued a Notice of Intent to Deny, which advised the applicant that

In a sworn statement executed before the Service, [REDACTED] admits that he provided fraudulent Form I-705 affidavits for applicants seeking benefits as Special Agricultural Workers. He provided the Service with a partial list of names of people that he signed Form I-705's for and on this list he indicated who did, in fact, work for him during the qualifying period. He further declares that each and every Form I-705 signed by him and issued to an applicant whose name did not appear on the list, is to be considered false, fictitious and fraudulent. A review of the record reflected that [the applicant's name] does not appear on the list of those applicants that did, in fact, work with [REDACTED] during the qualifying period.

The applicant was granted 30 days in which to submit a response.

In response to the NOID, the applicant submitted a letter that states that he made several unsuccessful attempts to contact [REDACTED] and submitted a handwritten affidavit dated March 27, 1991, from a former supervisor, [REDACTED], that states: "This is to inform you that [REDACTED] has worked for me since May of 85. [REDACTED] is the witness of seeing [sic] [REDACTED] working in the field work for [REDACTED]." The applicant also submitted an affidavit written by [REDACTED], dated September 6, 1991, that states that he personally witnessed the applicant working under [REDACTED] and that on September 5, 1991, he observed [REDACTED] verbally assault the applicant and then refuse to provide any further evidence.

On August 19, 1991, the director determined that the applicant had failed to overcome the adverse evidence and denied the application.

On appeal, the applicant submitted affidavits from a former co-worker, [REDACTED], and an acquaintance, [REDACTED] who reaffirmed the applicant's claimed employment.

On June 12, 1994, the LAU remanded the case citing that [REDACTED] sworn statement indicated that there were two separate lists of employees,¹ which he had provided to the legacy INS and that the record contained only one list.

On August 3, 1995, the director again denied the application, finding that [REDACTED] provided the legacy INS with a partial typewritten list of names of individuals for whom he signed fraudulent Form I-705's and on this list, he added handwritten names of those individuals that actually worked for him during the qualifying period. The director reiterated that [REDACTED] declared that each and every Form I-705 signed by him and issued to an applicant whose name does not appear in handwritten form is to be considered false, fictitious and fraudulent.. The director further informed the applicant that in response to the remand, an Immigration Officer contacted the Special Agent that initially obtained the signed sworn statement from [REDACTED] and his attorney and that he Special Agent clarified there is no separate "hand-printed list." The hand-printed list referred to in the sworn statement are the hand-printed names added to the type-written list that was included in the record; and to names with lines drawn through them.

On appeal, counsel submits a brief indicating that the applicant had submitted sufficient credible testimony apart from his own testimony to establish his claim as a matter of just and reasonable inference. Counsel also submits a notarized affidavit, dated September 28, 1995, from a former co-worker, [REDACTED] who reaffirmed the applicant's claimed employment for [REDACTED] in Willcox, Arizona in 1985. Counsel also submits an affidavit notarized September 28, 1995, verifying the 1992 death of [REDACTED] and attesting to the applicant's claimed employment, signed by [REDACTED] son of [REDACTED]

¹ LAU advised the applicant that [REDACTED] referred to two separate lists of employees: "(1) Attachment of Affidavit of [REDACTED]; and (2) a handwritten list entitled 'Legitimate Employees.'"

Although the director initially incorrectly characterized the derogatory evidence, he correctly informed the applicant that [REDACTED] admitted that he provided fraudulent Form I-705 affidavits to applicants and that the evidence indicated that the applicant had not actually worked for [REDACTED] during the qualifying period.

The evidence the applicant submitted to overcome the director's finding is insufficient. The applicant provided affidavits, his own, and those written by [REDACTED] and a letter from [REDACTED]. The affidavit of [REDACTED] is not corroborated by any independent evidence. [REDACTED], the son of [REDACTED], avers to his father's death but failed to provide a copy of his father's death certificate. The applicant stated that that he made several unsuccessful attempts to contact [REDACTED]. This is contradicted by an affidavit he submitted from [REDACTED] that states that he observed [REDACTED] verbally assaulting the applicant in September 1991 and refuse to give him evidence in support of his application. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

An alien applying for adjustment of status has the burden of proving by a preponderance of the evidence that he or she is admissible to the United States under the provisions of section 210(c) of the Act, 8 U.S.C. § 1160, and is otherwise eligible for adjustment of status under this section. 8 C.F.R. § 210.3(b)(1). The applicant has failed to meet this burden.

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