



U.S. Citizenship
and Immigration
Services

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invasion of personal privacy**

Handwritten initials

[Redacted]

FILE:

[Redacted]

Office: CALIFORNIA SERVICE CENTER

Date: MAY 03 2007

XBA 88 256 03087

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.

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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 Legalization Appeals Unit (LAU), now the Administrative Appeals Office (AAO). 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 determination was based on information provided by [REDACTED] and [REDACTED] for whom the applicant claimed to have worked.

On appeal, counsel asserted that the applicant was currently detained at the San Pedro Detention Center. Counsel asserted that the applicant would have to be released in order to obtain additional evidence from co-workers or the affiants. Counsel asserted that a brief would be submitted within 30 days. Counsel subsequently requested an additional 60 days in which to supplement the appeal. To date, however, no additional correspondence has been presented by counsel or the applicant.

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 the above by a preponderance of the evidence. 8 C.F.R. § 210.3(b)(1).

On the application, Form I-700, the applicant claimed 93 man-days of qualifying agricultural services for [REDACTED] at [REDACTED] Farm in Clackamas County, Oregon, from May 15, 1985 to May 1, 1986. In support of the claim, the applicant submitted a Form I-705 affidavit and a separate employment letter, both purportedly signed by [REDACTED]

The applicant was then interviewed by an officer. The officer concluded that the applicant's claim was not credible, and recommended that the application be denied.

In attempting to verify the applicant's claimed employment, the legacy Immigration and Naturalization Service (INS) acquired information which contradicted the applicant's claim. In the United States District Court for the District of Oregon, [REDACTED] pled guilty to conspiracy to falsify and sell thousands of affidavits attesting to employment on his farm. As part of his plea agreement, [REDACTED] and [REDACTED] have sworn statements in which they provided, based on their records and memory, a list of 31 names of individuals who did in fact actually perform at least 90 man-days of qualifying agricultural employment for them. They also provided another list of 101 names of individuals (again based on their memory and records) they believed worked for them, but for less than 90 days. The applicant's name does not appear on either list. The applicant's name appears on the list of those individuals who worked less than 90 man-days. Both [REDACTED] also stated that they have no other records, documentation or personal recollection which would support any other Form I-705 affidavit. Several thousand aliens are known to have filed applications claiming to have performed 90 or more man-days of employment for the [REDACTED]

On May 21, 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 the applicant had not overcome the derogatory evidence, and denied the application July 2, 1992.

On October 7, 1999, the LAU remanded the case in order for counsel or the applicant be provided with a copy of the Notice of Decision. On November 14, 2006, Director, California Service Center sent a copy of said notice to the counsel at her address of record. The notice, however, was returned by the post office as undeliverable. No new address has been provided by counsel.

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. [REDACTED] (E.D. Cal.).

According to 8 C.F.R. 210.3 (b)(3), the burden of proof is on the applicant until he has submitted sufficient credible evidence which is amenable to verification and shows the extent of the claimed employment as a matter of just and reasonable inference. In this case, the applicant's claim relies on documentation provided by affiants who, as part of a plea agreement, indicated that 132 individuals worked for them during the qualifying period, and that only 31 of these individuals worked 90 or more days during such period. These affiants were convicted of providing false documentation in support of special agricultural worker applications.

While the applicant appears to reiterates his employment claim for the [REDACTED] on appeal, he has provided no documentation whatsoever to rebut the adverse evidence. In light of that, [REDACTED] guilty plea, the fact that a massive number of applicants all claimed to have worked at Toney's [REDACTED] Farm at the same time, and the negative finding of the interviewing officer regarding the applicant's credibility, it is concluded the applicant has not established the performance of at least 90 days of employment for the [REDACTED]. Consequently, the applicant is ineligible for adjustment to temporary resident status as a special agricultural worker.

Beyond the decision of the director, it is noted that the record contains a sworn statement executed on April 21, 1993 by the applicant, which he admitted he first arrived in the United States in 1984 and worked in the fields for eight months during 1984. The applicant also admitted that he did not return to the United States until 1987. This statement made under oath by the applicant raises further questions regarding the credibility of his employment claim with the [REDACTED].

The regulation at 8 C.F.R. § 210.3(d)(3) states in part that an alien who has been convicted of a felony or three or more misdemeanors committed in the United States is ineligible for temporary resident status.

"Felony" means a crime committed in the United States punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except when the offense is defined by the state as a misdemeanor, and the sentence actually imposed is one year or less, regardless of the term such alien actually served. 8 C.F.R. § 245a.1(p).

Citizenship and Immigration Services records reflect that:

- On February 4, 2004, the applicant was arrested by the Los Angeles Police Department and subsequently charged with transportation/sell of a narcotic controlled substance, a violation of section 11352(a) H&S, and possession of a controlled substance for sale – cocaine, both felonies. On May 12, 2004, the applicant was arrested under warrant no. [REDACTED]. On June 10, 2004, the applicant was convicted of violating section 11352(a) H&S in the Los Angeles County Superior Court. The applicant was sentenced to serve 120 days in jail and placed on probation for three years. The remaining charge was dismissed.
- On September 11, 2004, the applicant was arrested by the Los Angeles Police Department for unlawful driving or taking of a vehicle, a violation of section 10851(a) VC. The applicant was also arrested for transportation/sell of a narcotic controlled substance, a violation of section 11352(a) H&S. On September 24, 2004, the applicant's charge of violating section 10851(a) VC was dismissed due to insufficient cause. The final outcome of the drug offense is unknown.

The record of proceeding, in this case, does not contain the court's final dispositions for the applicant's arrests to establish that he was, in fact, convicted of the crimes listed above. As such, the AAO cannot determine whether or not the applicant was convicted of the offenses mentioned above.

The record, however, does contain court documentation that reflects on November 15, 2005, the applicant was arrested under the alias [REDACTED] in Los Angeles County, California for unlawful driving or taking of a vehicle, a violation of section 10851(a) VC, and receiving stolen property – a motor vehicle, a violation of section 496d(a) PC. On December 16, 2005, in the Los Angeles County Superior Court, the applicant was charged with two felony counts. On February 10, 2006, the applicant was convicted of a violating section 10851(a) VC, a felony. The applicant was sentenced to serve 16 months in prison. Case no. [REDACTED]

The applicant stands convicted of a felony. He is therefore ineligible for temporary resident status. 8 C.F.R. § 210.3(d)(3). Within the legalization program, there is no waiver available to an alien convicted of a felony or three misdemeanors committed in the United States. Section 101(a)(43)(G) of the Act states that the term "aggravated felony" means a theft offense for which the term of imprisonment is at least one year. In the instant case, the applicant is an aggravated felon as he was convicted of unlawful driving or taking of a vehicle and was sentenced to 16 months in prison. The applicant is therefore ineligible for the benefit being sought.

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