

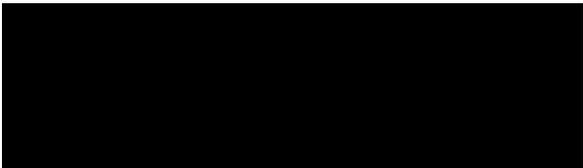
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**U.S. Citizenship
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Services**

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invasion of personal privacy**

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FILE: [Redacted]
XFR 88 233 01139

Office: CALIFORNIA SERVICE CENTER

Date: **MAY 03 2007**

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.

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, and remanded by the Administrative Appeals Office (AAO). The Director, California Service Center, withdrew the previous decision, reopened the proceedings, and denied the application again. The matter is now before the AAO on appeal. The appeal will be dismissed.

The applicant had been admitted to the United States as an S-9 preliminary applicant. The director denied the application because the applicant submitted employment documents which differed significantly from the claim of employment as set forth in the original Form I-700 application.

On appeal from the initial decision, the applicant asserted that he had met his burden of proof.

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).

The applicant was admitted to the United States at Calexico, California on May 5, 1988 as an S-9 applicant who established a preliminary claim to eligibility for temporary resident status as a special agricultural worker. The applicant was admitted for a period of 90 days in accordance with 8 C.F.R. § 210.2(c)(4)(iii), and required, within that 90 day period, to submit a complete application, along with a Fingerprint Card, Form FD-258, to any legalization office. A complete application included evidence of qualifying employment, evidence of residence, a report of medical examination and the prescribed number of photographs. 8 C.F.R. § 210.1(d).

The record indicates that, at the time of entry, the applicant signed an advisory statement (written in both English and Spanish) which outlined the procedures for filing a preliminary application. This statement reads, in pertinent part, "Do not make any changes on this application. If the information on the application is different from that on the supporting documents, you must be able to explain the difference to the immigration officer during the interview."

At the time of entry into the United States, the applicant's Form I-700 application indicated employment for 74 man-days for [REDACTED] from April 1988 to July 1988. At the time the applicant presented the application package to the legacy Immigration and Naturalization Service (INS), the Form I-700 had been amended to include agricultural employment for [REDACTED] for 118 man-days from May 1985 to May 1986. In support of the claim, the applicant submitted a Form I-705 affidavit and a separate employment letter signed by Lucio Morales.

The director denied the application on July 15, 1991, because the applicant had severely diminished his credibility by revising his claim.

On October 31, 1991, the AAO remanded the case as evidence in the record indicates that the amended employment claim was presented at the time the applicant submitted his *complete* application at the time of his interview. Therefore, it was concluded that applicant did, in fact, explain such change as reflected by the interviewing officer's notes taken during that interview.

On February 9, 2005, the director complied with the applicant's request for a copy of the record of proceedings.

On September 6, 2006, the director withdrew the previous decision, reopened the proceedings, and issued a Notice of Intent to Deny. The applicant was advised that because his employment for [REDACTED] was performed subsequent to the qualifying period it could not be considered. In addition, on August 31, 1988, in a signed agreement with the United States Attorney's Office in Fresno, California [REDACTED] agreed to plead guilty to conspiracy to create false immigration documentation and creating false immigration documentations. In the Memorandum of Plea Agreement, [REDACTED] admitted that he created, and sold, approximately 4,000 false writings and documents for use by aliens who were applying for special agricultural worker status.

It is noted that the director indicated that the applicant provided no explanation for his revised employment claim. However, as noted in the AAO's remand notice of October 31, 2001 that based on the interviewing officer's notes the applicant had, in fact, provided an explanation. The applicant's employment, however, with Mr. [REDACTED] was deemed not credible by the interviewing officer.

The applicant was also advised of his arrest on May 8, 2000 by the Sheriff's Office in Visalia, California for disorderly conduct, under the influence/drug.

The applicant was given thirty days in which submit the court disposition for this arrest as well as evidence to rebut the adverse evidence regarding his agricultural employment. The applicant, however, failed to respond to the notice, and accordingly, on November 17, 2006, the director denied the application.

The applicant has neither addressed the subsequent Notice of Decision nor submitted any evidence to overcome the director's findings.

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.).

Declarations by an applicant that he has not had a criminal record are subject to a verification of facts by the Service. The applicant must agree to fully cooperate in the verification process. 8 C.F.R. § 210.3(b)(3) states all evidence regarding admissibility and eligibility submitted by the applicant for adjustment of status will be subject to verification by Citizenship and Immigration Services. Failure by the applicant to release information may result in the denial of the benefit sought. Additionally, 8 C.F.R. § 210.3(c) states in part: "A complete application for adjustment of status must be accompanied by proof of identity, evidence of qualifying employment, evidence of residence and such evidence of admissibility or eligibility as may be requested by the examining immigration officer in accordance with such requirements specified in this part."

Under these circumstances, even assuming that the applicant's documentation was actually provided by Lucio Morales, as it purports to have been, it can be accorded absolutely no credibility. In fact, rather than serving as evidence that the applicant worked in agriculture as claimed, the presentation of those documents is strong

evidence that, in the absence of any legitimate claim of agricultural employment, the applicant chose to submit a fraudulent employment claim.

The applicant has failed to credibly establish the performance of at least 90 man-days of qualifying agricultural employment during the twelve-month statutory period ending May 1, 1986. The applicant has also failed to provide the court disposition necessary for the adjudication of his application. 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.