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**U.S. Citizenship
and Immigration
Services**

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FILE: [REDACTED]
XMA 89 844 05047

Office: CALIFORNIA SERVICE CENTER

Date: **MAY 04 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

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

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 eligibility period. This decision was based on adverse information provided to the legacy Immigration and Naturalization Service (INS) by [REDACTED] for whom the applicant claimed to have worked.

On appeal from the initial decision, the applicant reasserted the veracity of his employment claim and submitted additional documentation in support of his claim.

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).

On the Form I-700 application, the applicant claimed 103 man-days of qualifying agricultural employment for [REDACTED] at [REDACTED] Canada and El Brass in Santa Barbara County, California from May 1985 to [REDACTED] 1985. In support of the claim, the applicant submitted a Form I-705 affidavit and a separate employment letter, both signed by [REDACTED], who attested to the applicant's employment from May 6, 1985 to December 17, 1985.

On July 11, 1990, the director issued a Notice of Intent to Deny, which advised the applicant that [REDACTED] has never been involved in growing perishables commodities or field work. The company engages in processing and packing of sugar beets.

The applicant, in response, submitted a letter from an acquaintance, [REDACTED], who indicated that "there is some confusion as to the name of the farm where [the applicant] worked." Ms. [REDACTED] further indicated:

The farm is owned by Mr. & Mrs. [REDACTED] Sutti. Mrs. [REDACTED] informed me that the land where the farm is located used to belong to [REDACTED] and she and everyone else always refer to the farm as "[REDACTED]". However, the actual name of the farm is the [REDACTED].

Mrs. [REDACTED] also confirmed that [REDACTED] was the labor contractor on her farm during the 1980's. Mr. [REDACTED] also referred to the farm as "[REDACTED]". Therefore, when Mr. [REDACTED] filled out the Affidavit for [the applicant] he referred to the farm as "[REDACTED]".

Ms. [REDACTED] provided the telephone number for Mr. & Mrs. [REDACTED] in order to verify her statement.

The director, in denying the application, noted that no independent evidence was submitted to support Ms. [REDACTED]'s statement or to rebut the adverse evidence relating to the applicant's claimed employment. On appeal, the applicant reaffirmed his employment with [REDACTED] and submitted:

- An notarized affidavit from Mrs. [REDACTED] who indicated that she purchased the ranch from [REDACTED] in two parts; in 1973 and 1974 and that she as well as her family, labor contractors and workers “referred to my ranch as the [REDACTED] ranch because the land was previously owned by [REDACTED]. Mrs. [REDACTED] indicated that [REDACTED] was in her employ as a labor contractor.
- An notarized affidavit from an acquaintance, [REDACTED] who indicated that the applicant resided with his family during the twelve-month eligibility period ending May 1, 1986 and attested to the applicant’s employment in the fields.

The case was forwarded to the LAU for review. On February 17, 1992, the LAU remanded the case as additional adverse evidence was obtained by the legacy INS, which the applicant had not been advised of.

On August 29, 2006, the director withdrew the previous decision, reopened the proceedings for review, and issued a Notice of Intent to Deny. The notice advised the applicant that [REDACTED] was ordered by the Federal Injunction to cease operating as a farm labor contractor in 1983. Mr. [REDACTED] stated that his signature had been falsified on employment documents, and submitted to the legacy INS a list of names belonging to the individuals who had actually worked for him or with him. The applicant is not named on this list. The applicant was also advised that he indicated at item 23 on his Form I-700 application, residence commencing in July 1986, but failed to list his residence since May 1, 1983 as required.

The director noted that the applicant claimed on his Form I-700 that Union Sugar was located in El Brass County, Santa Barbara, California. The director’s finding, however, is in error as the applicant listed “El Brass” as the name of one of the farms he worked in Santa Barbara County.

The applicant was granted thirty days to respond. The director, in denying the application, on November 20, 2006, noted that the applicant failed to respond to the notice. The record, however, reflects that the applicant did submit a response, which was received on September 19, 2006. In response to the Notice of Intent to Deny, the applicant stated, “[t]he evidence you request is from the 1985, this is over twenty years ago. The persons I worked for are longer with the company. It is impossible [sic] for me to obtain further documents. All documents requested have already been provided and should be in my files.”

On appeal, the applicant reiterates the contents of his statement that was submitted in response to the Notice of Intent to Deny.

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.).

The applicant is not named on the list of employees provided by [REDACTED]. The applicant has not overcome this adverse evidence which directly contradicts the applicant's claim. Therefore, the documentary evidence submitted by the applicant cannot be considered as having any probative value or evidentiary weight.

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. 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.