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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
XLU 88 250 01016

Office: TEXAS SERVICE CENTER Date:

NOV 29 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, Southern Service Center, and is now before the Administrative Appeals Office on appeal. The case will be remanded for further consideration and action.

On September 6, 1988, the applicant was interviewed at the legalization office in Lubbock, Texas. The Form I-696, Legalization/SAW Examinations Worksheet, indicates that the interviewing officer recommended that the application be denied due to insufficient documentation.

On August 12, 1991, the director denied the application for lack of prosecution as the applicant failed to appear for his rescheduled interviews. At the time the Form I-700 application was filed, the applicant did not complete items 24 through 29 on the application and, therefore, he was requested to appear on August 30, 1990 and September 12, 1990 in order to complete the application.

On March 13, 1992, the director, sent a Form I-72 informing the applicant that his original Form I-694, Notice of Appeal, filed on August 27, 1991 was not contained in the record. The applicant was directed to submit a duplicate copy of his Form I-694 along with any documentation that may have accompanied the appeal. The applicant was also provided a copy of his incomplete Form I-700 and directed to complete items 24 through 29.

The applicant, in response, only provided a completed Form I-700 application. Accordingly, the applicant has overcome the deficiency outlined in the director's Notice of Decision. As the applicant overcame the single documentary deficiency stated by the director, the case should have been reopened at that point and fully adjudicated on its merits.

On October 6, 2005, the director sent another notice informing the applicant that his original Form I-694, Notice of Appeal, filed on August 27, 1991 was not contained in the record. The applicant was directed to submit a duplicate copy of his Form I-694, and was provided with copies of Form I-694 in the event he did not retain a copy of his original appeal.

The applicant, in response, provided a duplicate Form I-694. The applicant reaffirmed his agricultural employment during the requisite period. The applicant's request for a copy of the record of proceedings has been complied with by Citizenship and Immigration Services.

The record shows that the applicant has complied with the Citizenship and Immigration Services requests by submitting a reconstructed Form I-694 and a completed Form I-700 application necessary to complete the application process.

In order to be eligible for temporary resident status as a special agricultural worker (SAW), 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).

On the Form I-700 application, the applicant claimed 48 man-days of qualifying agricultural services from May 1985 to July 1985 at Futch Farms in Yoakum County, Texas, and 45 man-days of qualifying agricultural services from July 1985 to August 1985 for Otis Smith in Gaines County, Texas under the supervision of [REDACTED] in support of the claim, the applicant submitted a Form I-705 affidavit and a separate employment letter signed by [REDACTED]

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*, McCormack, Evidence sec. 339 (2d ed. 1972).

The inference to be drawn from the documentation shall depend on the extent of the documentation, its credibility and amenability to verification. If an applicant establishes that he has in fact performed the requisite qualifying agricultural employment by producing sufficient evidence to show the extent of that employment as a matter of just and reasonable inference, the burden then shifts to the Service to disprove the applicant's evidence by showing that the inference drawn from the evidence is not reasonable. 8 C.F.R. § 210.3(b)(1).

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... if the Service has not obtained information which would refute the applicant's evidence, the applicant satisfies the requirements for the SAW program with respect to the work eligibility criteria.

The documentation submitted by the applicant throughout the application process appears to be consistent and to corroborate the applicant's claim. It is therefore, concluded that the applicant performed the requisite qualifying agricultural employment during the twelve-month statutory period ending May 1, 1986.

There are no known grounds of ineligibility except for the fact that the fingerprint check has expired. As of March 29, 1998, applicants for temporary resident status as a SAW are required to be fingerprinted at a CIS Application Support Center or approved Designated Law Enforcement Agency. Accordingly, the case will be remanded for the purpose of the director to schedule an appointment in order for the applicant to be fingerprinted, and then complete the adjudication.

ORDER: The case is remanded for appropriate action and decision consistent with the foregoing.