



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

4



FILE: [REDACTED]
XPO 88 218 04029

Office: CALIFORNIA SERVICE CENTER

Date: **AUG 21 2008**

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Temporary Resident Status under 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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. You no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case. If your appeal was sustained or remanded for further action, you will be contacted.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: This matter is an application for temporary resident status as a special agricultural worker that was denied by the Director, Western Service Center and came before the Administrative Appeals Office (AAO) on appeal. The matter was remanded by the AAO. The case has been returned to the AAO on appeal and 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 adverse information acquired by the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS) relating to the applicant's claim of employment for [REDACTED].

On appeal, the applicant reiterated her claim of at least 90 days of qualifying agricultural employment in the period from May 1, 1985 to May 1, 1986. The applicant noted that she never received any correspondence relating the denial of her application and requested that she be provided with copies of both the notice of intent to deny and notice of denial.

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 (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 129 man-days picking lemons for [REDACTED] at San Gabriel Valley Labor Association in San Bernardino County, California from May 1985 to March 1986.

In support of the claim, the applicant submitted a corresponding Form I-705 affidavit and a separate employment affidavit, both purportedly signed by [REDACTED]. On the applicant's supporting documents, [REDACTED] indicated that his testimony relating to the applicant's employment was based upon his personal knowledge as a foreman for the San Gabriel Valley Labor Association.

In attempting to verify the applicant's claimed employment, the Service acquired information which contradicted the applicant's claim. Specifically, the Service received a letter dated March 26, 1990, from [REDACTED], General Manager-Secretary of AG Employers, Inc. (formerly San Gabriel Valley Labor Association). Ms. [REDACTED] indicated [REDACTED] was employed by San Gabriel Valley Labor Association strictly as a fork lift operator from January 1985 to March 1, 1986. From April 12, 1986 to July 3, 1988, [REDACTED] was employed as the foreman for AG Employers. Therefore, [REDACTED] was a foreman for only 20 days during the qualifying period. In addition, [REDACTED] was never given authority to sign employment verifications, nor was he given access to payroll records. Ms. [REDACTED] indicated that all employment verifications from the company were accompanied by payroll records, and that she personally

had signed almost all such verifications, except for a small number which were signed by two other officials of the company.

On August 15, 1990, the Service attempted to advise the applicant in writing of adverse information obtained by the Service, and of the Service's intent to deny the application. The applicant was granted thirty days to respond. While the record reflects that the applicant failed to respond to the notice this may have been due to the notice being mailed to an out of date address.

The director concluded the applicant had not overcome the derogatory evidence, and denied the application on February 14, 1992. The record shows that this notice was returned as undeliverable by the United States Postal Service.

On appeal, the applicant reiterated her claim of at least 90 days of qualifying agricultural employment in the period from May 1, 1985 to May 1, 1986. The applicant noted that she never received any correspondence relating the denial of her application and requested that she be provided with copies of both the notice of intent to deny and notice of denial.

Upon review, the AAO determined that the applicant's original appeal Form I-694 was not in the record of proceedings and remanded the case in order for the director to request that the applicant provide a duplicate copy of the appeal Form I-694 as well as any supporting documents. The director issued a request to the applicant for this material on October 12, 2004. In response, the applicant submitted a blank appeal Form I-694 and a copy of a separate statement that had been included with her original appeal Form I-694.

The record shows that the director subsequently provided the applicant with a copy of the record of proceedings, including copies of both the notice of intent to deny and notice of denial, on March 31, 2005. The record further shows that the applicant was again provided with copies of both of these notices when she appeared for an interview at the CIS District office in Los Angeles, California on September 26, 2007. The applicant was also provided with another appeal Form I-694 on this date and granted thirty days to submit additional material in support of her original appeal. The applicant's response shall be incorporated into her appeal.

The applicant indicates that she unsuccessfully attempted to locate her former employer in order to obtain further supporting documentation. The applicant reiterates her claim that she worked in the lemon fields located in the Rancho Cucamonga, California area during the qualifying period. However, the applicant failed to address the fact that [REDACTED] had only worked twenty days as a foreman for San Gabriel Valley Labor Association during the qualifying period and was not authorized to sign employment documents on behalf of this enterprise.

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. S 87 1064 JFM (E.D. Cal. June 15, 1989).

██████████ attested that the applicant had worked 129 man-days picking lemons during the qualifying period and indicated he knew the extent of the applicant's employment due to his personal knowledge as a foreman for the San Gabriel Valley Labor Association (subsequently known as AG Employers) on the Form I-705 affidavit and a separate employment affidavit. However, the letter from AG Employers indicates that ██████████ was employed there as a foreman for only 20 days during the qualifying period. The adverse information acquired by the Service regarding the applicant's employment for ██████████ directly contradicts the applicant's claim. The applicant has not overcome such derogatory evidence.

The applicant has failed to establish credibly 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.