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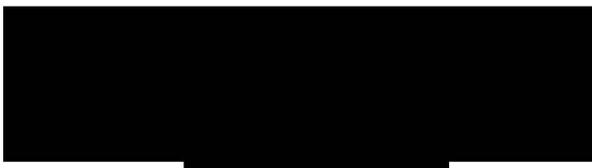
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
XLA 89 158 01001

Office: DALLAS

Date: **OCT 07 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.

A handwritten signature in black ink, appearing to be "R. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: This matter is an application for temporary resident status as a special agricultural worker that was initially denied by the Director, Western Service Center and came before the Administrative Appeals Office (AAO) on appeal. The matter was remanded by the AAO and the application was subsequently denied again by the Director, Dallas, Texas. The case is again before the AAO on appeal and the appeal will be dismissed.

The director of the Western Service Center initially denied the application based upon the determination that the applicant had failed to submit evidence to support his claim that he performed at least 90 days of qualifying agricultural employment during the eligibility period from May 1, 1985 to May 1, 1986.

On appeal from the initial denial, the applicant indicated that he was attempting to obtain further documentation in support of his claim to have performed qualifying agricultural services during the eligibility period.

The AAO remanded the case because documentation provided by the applicant in support of his claim of agricultural employment had neither been acknowledged nor reviewed prior to the initial denial of the application.

The director of the Dallas, Texas office determined that the record did not contain sufficient verifiable evidence to demonstrate that the applicant performed at least 90 days of qualifying agricultural employment from May 1, 1985 to May 1, 1986. The director further determined that the applicant had failed to assist Citizenship and Immigration Services or CIS (formerly the Immigration and Naturalization Service or the Service) as required under 8 C.F.R. § 210.3(b)(3), because he did not provide requested court documents reflecting the disposition of criminal charges arising from his arrest for a violation of section 243b, Battery on a Peace Officer or Emergency Personnel, of the California Penal Code by the Los Angeles Police Department on July 18, 1991. Consequently, the director concluded that the applicant was not eligible to adjust to temporary resident status as a special agricultural worker and denied the application again on August 17, 2007.

On appeal from this most recent denial, the applicant reaffirms his claim of employment for [REDACTED] during the eligibility period. The applicant asserts that Mr. [REDACTED] demanded \$500.00 to sign the Form I-705 affidavit contained in the record and would not sign this document when the applicant refused to pay. The applicant contends that he can submit additional documentation in support of his claim of employment for [REDACTED]. The applicant submits documents in support of his appeal.

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).

An alien who has been convicted of a felony or three or more misdemeanors in the United States is ineligible for temporary resident status. 8 C.F.R. § 210.3(d)(3).

Declarations by an applicant that he has not had a criminal record are subject to a verification of facts by the Service [or its successor CIS]. The applicant must agree to fully cooperate in the verification process. The regulation at 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 the Service [or its successor CIS]. Failure by the applicant to release information may result in the denial of the benefit sought. Additionally, the regulation at 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.

The first issue to be examined in this proceeding is whether the applicant has submitted sufficient documentation relating to his criminal history to determine that he is admissible to the United States under the provisions of section 210(c) of the Act as required by 8 C.F.R. § 210.3(a).

The applicant provided a photocopied certified copy of judgment reflecting that he pleaded guilty to a misdemeanor violation of section 11357(b), Possession of Not More Than 28.5 Grams of Marijuana, of the California Health and Safety Code, and a violation of section 24603, Inadequate Stoplamp, of the California Vehicle Code, in case number [REDACTED] on July 15, 1985.

The record contains reports from the Federal Bureau of Investigation (F.B.I.) that are dated January 13, 2005 and September 26, 2007 respectively, which based upon fingerprint comparison reflect that the applicant was arrested and charged with a misdemeanor violation of section 243b, Battery on a Peace Officer or Emergency Personnel, of the California Penal Code by the Los Angeles Police Department on July 18, 1991. The record shows that CIS issued a notice of intent to deny to the applicant on January 27, 2005, in which the applicant was asked to provide court documents to establish the disposition of the criminal charge brought against him on July 18, 1991.

In response, the applicant submitted a detailed statement written on his behalf in which he acknowledged that he had been arrested by the Los Angeles Police Department on July 18, 1991. The applicant claimed that he had returned to his car on this date and discovered a police officer writing a parking ticket before the meter had expired. The applicant asserted that an argument ensued between he and the officer culminating in the applicant grabbing the ticket book out of the officer's hands. The applicant stated that the officer called for assistance and that he was arrested and charged with a misdemeanor violation of section 243b, Battery on a Peace Officer or Emergency Personnel, of the California Penal Code by the Los Angeles Police Department on this same date. The applicant contended that he subsequently released from jail on his own

recognizance and given a notice to appear before the Hearing Section of the Criminal Division of the City Attorney's Office on September 10, 1991. The applicant noted that he went to the City Attorney's Office on September 10, 1991 but the arresting officer failed to appear for the scheduled hearing. The applicant claimed that he was told he could go home and the charge would be dropped. The applicant declared that nothing further happened until 1994 when he received a notice relating to an unpaid parking ticket issued for his vehicle on the same date as his arrest on July 18, 1991. Although the applicant submitted a prisoner's receipt, a notice of hearing from the City Attorney's Office for the applicant to appear on September 10, 1991, and a notice dated November 30, 1994 from the Parking Violations Bureau of the City of Los Angeles for an unpaid parking ticket issued on July 18, 1991, he failed to submit any court documents to establish the final disposition of the criminal charge, a misdemeanor violation of section 243b, Battery on a Peace Officer or Emergency Personnel, of the California Penal Code brought against him on July 18, 1991. Without independent evidence to corroborate the applicant's claim that this charge was dismissed, the applicant's statements cannot be considered as persuasive. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

It is concluded the applicant has failed to provide documents necessary for the adjudication of his application. An alien applying for adjustment of status has the burden of proving by a preponderance of the evidence that he or she is admissible to the United States under the provisions of section 210(c) of the Act and is otherwise eligible for adjustment of status under this section. 8 C.F.R. § 210.3(b)(1). The applicant has failed to meet this burden and remains ineligible to adjust to temporary residence as a special agricultural worker on this basis.

The next issue to be determined in this proceeding is whether the applicant submitted sufficient documentation to establish that he engaged in qualifying agricultural employment for at least 90 man-days during the twelve-month period ending May 1, 1986.

On the Form I-700 application, the applicant claimed 160 days of employment thinning nectarines, plums, peaches, and grapes for ██████████ in Woodlake, California from April 1985 to September 1985.

In support of the claim, the applicant submitted a Form I-705 affidavit. Although the Form I-705 affidavit contains employment information that corresponds to the claim of employment for ██████████ put forth by the applicant on the Form I-700 application, the Form I-705 affidavit was not signed by ██████████. In addition, the information listed on the Form I-705 affidavit indicated that the applicant also performed 11 days of employment picking plums for ██████████ at ██████████ in Exeter, California from July 7, 1985 to August 11, 1985. It is noted that the Form I-705 affidavit was signed by ██████████. Therefore, the Form I-705 affidavit can only be considered to contain sufficient testimony to substantiate the applicant's claim of 11 days of employment for ██████████ during the period from May 1, 1985 to May 1, 1986.

The applicant also included a separate co-worker affidavit that was signed by [REDACTED]. [REDACTED] stated that he had known the applicant "since 1982 when we worked together in the fields with [REDACTED] doing all kinds of field work. We picked plums, nectarines and grapes. All the time we worked in the fields, [REDACTED] paid us in cash." However, [REDACTED] failed to attest that the applicant performed at least 90 days of qualifying agricultural employment for [REDACTED] in the period from May 1, 1985 to May 1, 1986. Without such specific testimony, [REDACTED]'s attestations cannot be considered as being probative of the applicant's claim of employment for [REDACTED] during the eligibility period.

As previously discussed, the application was initially denied on August 4, 1992 based upon the determination that the applicant had not submitted any supporting employment documents. The AAO remanded the case on November 10, 1999 for a review of the employment documents contained in the record. The director of the Dallas office determined that the Form I-705 affidavit and the co-worker affidavit signed by [REDACTED] record did not contain sufficient verifiable evidence to demonstrate that the applicant performed at least 90 days of qualifying agricultural employment from May 1, 1985 to May 1, 1986. The director concluded that the applicant was not eligible to adjust to temporary resident status as a special agricultural worker and denied the application again on August 17, 2007.

On appeal from this most recent denial, the applicant reaffirms his claim of employment for [REDACTED] during the eligibility period. The applicant asserts that [REDACTED] demanded \$500.00 to sign the Form I-705 affidavit contained in the record and would not sign this document when the applicant refused to pay. The applicant notes that [REDACTED] the individual who provided the co-worker affidavit had passed away. Although the applicant contends that he can submit additional documentation in support of his claim of employment for [REDACTED] the record shows that the applicant has failed to submit any additional material to support such claim.

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).

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The supporting documents in the record only contain sufficient testimony to corroborate the applicant's claim that he performed 11 days of qualifying agricultural employment for [REDACTED] at [REDACTED] in Exeter, California from July 7, 1985 to August 11, 1985.

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 on this basis as well.

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