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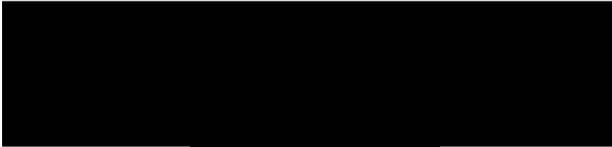
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [Redacted]
XHP 88 540 02140

Office: LOS ANGELES

Date: SEP 26 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. P. 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 District Director, Los Angeles, California. The case is again before the AAO on appeal and the appeal will be sustained.

The director initially denied the application based upon the determination that the applicant had failed to appear for the requisite interview on two separate occasions.

On appeal from the initial denial, the applicant reaffirmed his claim of qualifying agricultural employment picking strawberries for ██████████ at Cooperativa La Paz from May 10, 1985 to September 20, 1985. The applicant indicated that he never received any correspondence from the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS) scheduling him for an appointment for the required interview. The applicant stated that he went to the Service's Legalization Office in Huntington, California and was informed that the Service did not possess his most current address. The applicant noted that he was photographed and fingerprinted and provided with an Employment Authorization Card. The applicant declared that he visited this Service office again after more time had passed to inquire about his status and was informed that his application was still pending and provided with an extension of his employment authorization.

The AAO remanded the case concluding that the applicant should be provided another opportunity to appear for the required interview. The record shows that the applicant subsequently appeared for an interview at the CIS District Office in Los Angeles, California on July 7, 2007.

The district director determined that the record did not contain sufficient verifiable evidence to demonstrate that the applicant performed at least 90 days of qualifying agricultural employment for ██████████s at Cooperativa La Paz from May 10, 1985 to September 20, 1985. The district director further determined that the applicant had provided information on his Form I-700 application relating to his place of residence and occupation during the eligibility period from May 1, 1985 to May 1, 1986 that conflicted with his claim of qualifying agricultural employment. The district director concluded that the applicant was not eligible to adjust to temporary resident status as a special agricultural worker and denied the application again November 13, 2007.

On appeal from this most recent denial, the applicant reaffirms his claim of employment for ██████████ during the eligibility period. The applicant states that he traveled to Salinas, California in an unsuccessful attempt to obtain further supporting documentation from both ██████████ and Cooperativa La Paz. The applicant submits a new co-worker affidavit 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).

On the Form I-700 application, the applicant claimed 109 days of employment picking strawberries for [REDACTED] at Coop La Paz in Monterey County, California from May 10, 1985 to September 20, 1985. At part # 23 of the Form I-700 application where applicants were asked to list all residences and means of support in the United States since May 1, 1983, the applicant listed his address as [REDACTED] California and means of support as welder from August 1984 to March 1988.

In support of the claim, the applicant submitted a photocopy of the front page of a corresponding Form I-705 affidavit but failed to include the back page of the Form I-705 affidavit containing the signature blocks for both the employer and applicant. The applicant provided a separate employment affidavit dated May 11, 1988 and signed by [REDACTED]. In this separate affidavit, [REDACTED] stated that he had been a member of La Cooperative La Paz from 1978 to December 1985 but that company records were not available because all employees had been paid in cash. [REDACTED] noted that the applicant worked 109 days picking strawberries at \$1.25 per box from May 10, 1985 to September 20, 1985.

As previously discussed, the application was initially denied on April 22, 1991 based upon the determination that the applicant had not appeared for the required interview. The AAO remanded the case on January 2, 1996 in order to allow the applicant another opportunity to be interviewed. The record shows that the applicant subsequently appeared for an interview at the CIS District Office in Los Angeles, California on July 7, 2007. The notes of the interviewing officer reveal that the applicant testified that he first entered the United States without inspection by crossing the border from Tijuana, Mexico in August 1984. The applicant attested to a brief absence from this country when he returned to Mexico in December 1984 and subsequently reentered the United States in January 1985. The applicant testified that he lived in Los Angeles, California until April 1985 when he went to Salinas, California. The applicant indicated that he resided in Salinas, California for approximately 3½ to 4 months during which time he picked strawberries for \$1.25 per box. The applicant testified that he did not work in the fields at any other time and that he subsequently learned welding in 1986 and worked as a welder for the next ten years.

On August 24, 2007, the district director advised the applicant in writing of the intent to deny his application again. Specifically, the applicant was informed that the record did not contain sufficient verifiable evidence to demonstrate that the applicant performed at least 90 days of qualifying agricultural employment for [REDACTED] at Cooperativa La Paz from May 10, 1985 to September 20, 1985. The applicant was further informed that he had provided information on his Form I-700 application relating to his place of residence and occupation during the eligibility period from May 1, 1985 to May 1, 1986 that conflicted with his claim of qualifying agricultural employment. The applicant was granted thirty days to respond.

The record shows that the applicant failed to respond to the notice of intent to deny. The district director concluded the applicant had not overcome the grounds cited as the basis for the intended denial, and denied the application for a second time on November 13, 2007. While the district director noted that the denial was based upon the applicant's ineligibility resulting from criminal convictions in the notice of denial, the record contains no evidence to support such a finding. Consequently, the district director's misstatements in the notice of denial relating to applicant's criminal record and his eligibility to adjust to temporary residence as a special agricultural worker must be considered as harmless error.

On appeal from this most recent denial, the applicant reaffirms his claim of employment for [REDACTED] during the eligibility period. The applicant states that he traveled to Salinas, California in an unsuccessful attempt to obtain further supporting documentation from both [REDACTED] and Cooperativa La Paz.

The applicant submits a new co-worker affidavit signed by [REDACTED] indicates that he and the applicant both worked at La Cooperativa La Paz from February 1985 to September 1985 and that he has remained in contact with the applicant through the date the affidavit was executed. Although [REDACTED]' testimony relating to the date the applicant began his employment at this enterprise does not correspond to the start date listed by the applicant and [REDACTED] for his employment, such conflict is considered minimal in light of the significant passage of time and the fact that [REDACTED] testimony appears to be based upon his best recollection of events.

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... if the Service [now CIS] has not obtained information which would refute the applicant's evidence, the applicant satisfies the requirements for the SAW [special agricultural worker] program with respect to the work eligibility criteria. *United Farm Workers (AFL CIO) v. INS*, Civil No. S 87 1064 JFM (E.D. Cal. June 15, 1989).

In concluding that the applicant was ineligible to adjust to temporary resident status as a special agricultural worker, the district director determined that the record did not contain sufficient verifiable evidence to demonstrate that the applicant performed at least 90 days of qualifying

agricultural employment for [REDACTED] at Cooperativa La Paz from May 10, 1985 to September 20, 1985. However, the incomplete Form I-705 affidavit together with the separate employment affidavit must be viewed as probative of the applicant's claim of employment for

Although [REDACTED] indicated that he did not possess a phone in this separate affidavit, he did provide the same address on both the Form I-705 affidavit and separate affidavit as a means by which he could be contacted for verification purposes. Further, a review of California corporate records at the website <http://kepler.sos.ca.gov> reveals that Cooperativa La Paz, Inc., was incorporated in California on March 28, 1977 and [REDACTED] was listed as this corporation's agent for service of process. The record contains no evidence to reflect that any attempt was made to verify the applicant's employment at any point through the length of these proceedings and the district director has not adequately established that the information in the supporting evidence was inconsistent with the claims made on the application, or that it was false information. Therefore, the district director's finding that the record did not contain sufficient verifiable evidence to demonstrate that the applicant performed at least 90 days of qualifying agricultural employment for [REDACTED] at Cooperativa La Paz from May 10, 1985 to September 20, 1985 is withdrawn.

The district director further determined that the applicant had provided information on his Form I-700 application relating to his place of residence and occupation during the eligibility period from May 1, 1985 to May 1, 1986 that conflicted with his claim of qualifying agricultural employment. While the applicant may very well have listed an address in Los Angeles, California as his residence and welder as his means of support for that period from August 1984 to March 1988, such testimony does not preclude the possibility that he temporarily relocated to Salinas, California for approximately four months from May 10, 1985 to September 20, 1985 to engage in qualifying agricultural employment for [REDACTED] as claimed. In addition, the applicant's most recent testimony at his interview on July 5, 2007 only serves to reinforce his overall credibility as well as the credibility of his claim of employment.

The applicant has submitted sufficient evidence to establish as a matter of just and reasonable inference 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 has overcome the grounds cited by the district director as the basis for denial.

Accordingly, the applicant's appeal will be sustained. The district director shall continue the adjudication of the application for temporary resident status as a special agricultural worker.

ORDER: The appeal is sustained.