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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529 - 2090



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

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[Redacted]

FILE:

[Redacted]

Office: Nebraska Service Center

Date: APR 03 2009

XSK 88 167 1015

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:

[Redacted]

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.

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The application for temporary resident status as a special agricultural worker was denied by the Director, Nebraska Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. 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 former United States Immigration and Naturalization Service (the Service), now United States Citizenship and Immigration Services (USCIS), relating to the applicant's claim of employment for [REDACTED]

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 the provisions of section 210(c) of the 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 he worked for [REDACTED] for 95 man-days in the period between May 1, 1985 and May 1, 1986, hoeing and topping onions on the [REDACTED] of Davis County, Utah.

In support of his claim, the applicant submitted a Form I-705 affidavit confirming seasonal agricultural employment from [REDACTED]

In the course of attempting to verify the applicant's claimed employment, the Service acquired information that contradicted the applicant's claim. In a sworn statement before an officer of this Service on August 16, 1989, [REDACTED] stated he had kept lists of the laborers he had hired. He gave the Service a copy of his lists. The applicant's name was not on the list.

On July 13, 1993, the applicant was advised in writing of the adverse information obtained by the Service, and of the Service's intent to deny the application. The applicant was granted thirty days to respond. The applicant failed to respond to the notice.

The director concluded that the applicant had not overcome the derogatory evidence, and denied the application. On appeal, the applicant, through counsel, asserted that the records of [REDACTED] were incomplete and there would be no reason for [REDACTED] to keep complete records of illegal aliens he employed. Counsel further asserted that [REDACTED] was dead and that he had attached a copy of his death certificate. The applicant submitted additional affidavits including his own and those of two persons who he claimed obtained their permanent residency as special agricultural workers who were employed by [REDACTED] and whose names were not on the list. He included affidavits from friends who attested to his work for [REDACTED]

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.

The derogatory information obtained by the Service from [REDACTED] directly contradicts the applicant's claim. The applicant has not overcome such derogatory evidence.

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.