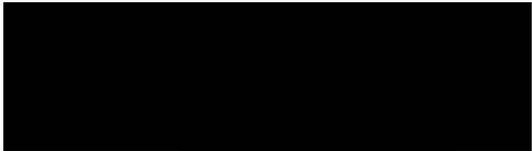




U.S. Citizenship  
and Immigration  
Services

L1



FILE: [REDACTED]  
XEM 88 524 07168

Office: CALIFORNIA SERVICE CENTER

Date: DEC 02 2009

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.

Perry Rhew  
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 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 statutory period from May 1, 1985 to May 1, 1986.

On appeal, the applicant reaffirmed two claims of employment that were initially put forth on the Form I-700 application by submitting additional employment documents from these employers. The applicant also requested that he be provided a copy of the record of proceedings and indicated that a brief would be forthcoming within thirty days of compliance with his request.

The record shows that United States Citizenship and Immigration Services or USCIS (formerly the Immigration and Naturalization Service or the Service) complied with the applicant's request and mailed a copy of the record to him on April 27, 2009 (NRC2008047457). However, as of the date of this decision, the applicant has failed to submit a statement, brief, or additional evidence to supplement his appeal. Therefore, the record must be considered complete.

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).

The regulation at 8 C.F.R. § 210.3(c)(3) states that affidavits [and other similar documentation] must also provide information regarding the crop and the type of work performed by the applicant and the period during which such work was performed. The affiant must provide a certified copy of corroborating records or state the affiant's willingness to personally verify the information provided. The weight and probative value of any affidavit accepted will be determined on the basis of the substance of the affidavit and any documents which may be affixed thereto which may corroborate the information provided.

On the Form I-700 application, the applicant failed to advance a cognizant and complete claim of agricultural employment in the eligibility period from May 1, 1985 to May 1, 1986.

The applicant submitted an employment letter that is signed [REDACTED]. Mr. [REDACTED] stated that he employed the applicant for 22 man-days picking cherries from June 19, 1985 to July 18, 1985.

The applicant included a Form I-705 affidavit signed by [REDACTED] who testified that she employed the applicant for 34 man-days pruning and picking pears and apples at [REDACTED] in Hood River County, Oregon from May 1, 1985 to May 1, 1986.

The applicant provided a Form I-705 affidavit and a separate employment verification letter both of which are signed by [REDACTED]. In both the affidavit and separate letter, [REDACTED] indicated that he employed the applicant for 11 man-days picking pears at [REDACTED] farm in Hood River County, Oregon from May 1, 1985 to May 1, 1986.

The applicant submitted a certified translation of a letter that is purportedly signed by [REDACTED] but is not accompanied by the original Spanish language letter. In the translation, [REDACTED] noted that he employed the applicant for 35 man-days from March 1985 to May 1985. However, [REDACTED] failed to specify the applicant's duties, the type of crop with which he worked, the location of such employment, and the exact amount of days if any the applicant worked subsequent to May 1, 1985. Without such information, the translation cannot be considered as probative evidence reflecting the performance of qualifying agricultural services in the eligibility period from May 1, 1985 to May 1, 1986 pursuant to the standards set forth in 8 C.F.R. § 210.3(c)(3).

Consequently, the evidence contained in the record reflected that the applicant performed only 67 man-days of qualifying agricultural services during the statutory period. The director concluded the applicant had failed to establish the performance of at least 90 man-days of qualifying agricultural employment during the eligibility period from May 1, 1985 to May 1, 1986 and denied the application on July 14, 1992.

On appeal, the applicant reaffirmed two claims of employment that were initially put forth in supporting documents included with his Form I-700 application by submitting additional employment documents from these employers. The applicant provided a new employment letter signed by [REDACTED] who reiterated that he employed the applicant in that period from June 19, 1985 to July 21, 1985. The applicant included a new employment letter that is signed by [REDACTED] and a photocopied Form W-2, Wage and Tax Statement, reflecting his employment for [REDACTED] in 1985. In her new employment letter, [REDACTED] now testified that she employed the applicant for 42 days in 1985. However, [REDACTED] failed to provide any explanation as to why she had revised her previous testimony that the applicant had worked 34 man-days pruning and picking pears and apples at [REDACTED] in Hood River County, Oregon from May 1, 1985 to May 1, 1986. Even if [REDACTED] revised testimony is viewed in a manner most favorable to the applicant, the applicant would have documented only 75 man-days of qualifying agricultural services in that period from May 1, 1985 to May 1, 1986.

The applicant's claimed employment of a maximum of 75 days does not meet the minimum requirement of at least 90 man days of agricultural employment performed during the eligibility period ending May 1, 1986. Consequently, the applicant is statutorily 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.