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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date:
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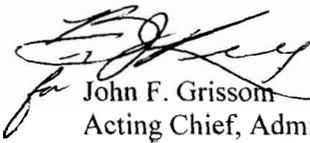
IN RE: Applicant: [REDACTED]

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. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


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, Western Service Center, now the California Service Center (CSC). The case was remanded by the Legalization Appeals Unit (LAU), now the Administrative Appeals Office (AAO). The matter is now before the 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 ending May 1, 1986. This determination was based on adverse information regarding the applicant's claim of employment for [REDACTED] at [REDACTED]

On July 22, 1999, the case was remanded by the LAU in order to allow the director the opportunity to include the Form I-694, Notice of Appeal, in the record of proceedings. On November 28, 2007, the Director, California Service Center, sent a notice informing the applicant that his original Form I-694 filed on January 22, 1993 was not contained in the record. The applicant was directed to submit a duplicate copy of his Form I-694, and was provided with copies of Form I-694 in the event he did not retain a copy of his original appeal. The applicant was provided 30 days in which to submit the requested documentation. The notice, however, was returned by the post office as undeliverable. On April 3, 2008, the case was forwarded to the AAO for review.

On April 22, 2009, the AAO sent a copy of the notice dated November 28, 2007, to counsel at his address of record. Counsel was given 15 days in which to respond to the notice. However, more than 45 days later, no correspondence has been received from counsel.

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 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 to have worked 98 man-days laboring in grapes and raisins for [REDACTED] at [REDACTED] from July 1985 to October 1985. In support of his claim, the applicant submitted a corresponding I-705 affidavit and a separate employment affidavit, both signed by [REDACTED]

In the course of attempting to verify the applicant's claimed employment, the legacy Immigration and Naturalization Service (legacy INS) acquired information which contradicted the applicant's claim. On March 27, 1991, [REDACTED] payroll clerk for [REDACTED] informed a Service officer that, during the qualifying period, [REDACTED] worked as a foreman only from August 1985 to October 1985, for approximately 54 days. [REDACTED] therefore could not have supervised anyone at that farm for 90 days or more.

On April 9, 1991, 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, however, failed to respond to the notice.

The director determined that the applicant had failed to overcome the adverse evidence, and denied the application on August 12, 1991.

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.).

The payroll clerk of [REDACTED] indicated that [REDACTED] was a foreman for only 54 days during the qualifying period and therefore could not have supervised any employees for over 90 days. The applicant has not overcome this derogatory evidence which directly contradicts the applicant's claim. Therefore, the documentary evidence submitted by the applicant cannot be considered as having any probative value or evidentiary weight.

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.

Finally, the record contains a court disposition from the Riverside County Superior Court, which reveals that on December 13, 2005, the applicant was convicted of violating section 487(a) PC, grand theft, a misdemeanor in [REDACTED]. The record also contains a court disposition from the San Diego County Superior Court, which reveals that on January 21, 2003, the applicant was convicted of violating section 23103(a) VC, reckless driving, a misdemeanor in [REDACTED]. While these convictions do not render the applicant ineligible pursuant to 8 C.F.R. § 210.3(d)(3), the AAO notes that the applicant does have two misdemeanor convictions.

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