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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

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[Redacted]

FILE: [Redacted] XLV 88 164 04014

Office: LOS ANGELES

Date: SEP 17 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:

[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: 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, Los Angeles, California. The case is again before the AAO on appeal and the appeal will be sustained.

The director of the Western Service Center initially 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 Service relating to the applicant's claim of employment for [REDACTED]. Specifically, the decision was based upon the visible and significant difference between signature exemplars obtained from [REDACTED] and the purported signatures of [REDACTED] on the applicant's employment documents.

On appeal from the initial denial, the applicant reiterated her claim of agricultural employment for [REDACTED]

The AAO remanded the case based upon the determination that the difference between signature exemplars obtained from [REDACTED] and the purported signatures of [REDACTED] contained in the applicant's supporting documents appeared to be minimal.

The director of the Los Angeles, California office determined that applicant had provided testimony at her interview on July 6, 2006 that negated her claim to have performed at least 90 days of qualifying agricultural employment from May 1, 1985 to May 1, 1986. The director further determined that the purported signatures of [REDACTED] on the applicant's employment documents were visibly and significantly different from signature exemplars obtained from [REDACTED]. 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 September 26, 2007.

On appeal from this most recent denial, counsel reiterates the applicant's claim of employment for [REDACTED] during the eligibility period. Counsel asserts that the applicant mistakenly stated that she first entered the United States in November 1985 at her interview on July 6, 2006 because of anxiety and the passage of time between the events she testified to and the date of her interview.

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 issue to be determined in this proceeding is whether the applicant submitted sufficient credible documentation to establish that she 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 preparer indicated that the applicant performed 95 days of employment picking cherries, grapes, and apricots for [REDACTED] in Merced County, California from May 1, 1985 to May 1, 1986.

In support of the claim, the applicant submitted a Form I-705 affidavit and a separate employment affidavit both of which are purportedly signed by [REDACTED]. The Form I-705 affidavit indicated that the applicant performed the qualifying agricultural services at Naraghi Farms in Merced County, California and that [REDACTED] employed the applicant in his capacity as a farm labor contractor.

As previously discussed, the application was initially denied on August 4, 1992 based upon the determination that the signature exemplars obtained from [REDACTED] were visibly and significantly different from the purported signatures of [REDACTED] on the applicant's supporting documents. The AAO remanded the case on December 7, 2000 stating it does not appear that a determination can be made without forensic analysis of the signatures.

The record shows that the applicant subsequently appeared at the United States Citizenship and Immigration Services or USCIS (formerly the Immigration and Naturalization Service or the Service) office in Los Angeles, California for an interview regarding her Form I-700 application on July 6, 2006. The notes of the interviewing officer reflect the applicant testified under oath that her first entry into the United States occurred in November 1985 when she entered without inspection through Calexico, California. The applicant noted that she departed this country and traveled to Mexico on an unspecified date in April 1986 and subsequently reentered the United States with a B-2 visitor's visa on April 30, 1986.

The director of the Los Angeles, California office determined that applicant had provided testimony at her interview on July 6, 2006 that negated her claim to have performed at least 90 days of qualifying agricultural employment from May 1, 1985 to May 1, 1986. The director further determined that the purported signatures of [REDACTED] on the applicant's employment documents were visibly and significantly different from signature exemplars obtained from [REDACTED]. 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 September 26, 2007.

On appeal from this most recent denial, the applicant submits a statement in which she declares that her nerves, anxiety, and the hostility of the interviewing officer all contributed to her being very agitated and upset at her interview on July 6, 2006. The applicant states that she became even more confused when the interviewing officer started asking about events that occurred approximately eighteen years prior to the interview and she mistakenly testified that she first entered the United States in November 1985 rather than the actual date she first entered the

country in November of 1984. The applicant notes that she realized her mistake almost immediately after the interview was concluded and discussed the mistake with her sister and brother-in-law who had accompanied her to the interview. The applicant provides a detailed recounting of her first entry on or about November 11, 1984 and asserts that she eventually took a bus to Livingston, California. The applicant declares that she had difficulties finding work initially until she began babysitting and housekeeping in January 1985. The applicant asserts that she continued working as a babysitter and housekeeper through late March or early April of 1985 and subsequently began her agricultural employment in May 1985. The applicant submits the detailed affidavit of her sister, [REDACTED] and a separate affidavit signed by [REDACTED] in support of her claim of entry into the United States in November 1984.

Counsel asserts that the significant passage of time between the applicant's interview date and her initial date of entry into this country was a reasonable contributor to the applicant's mistake. The assertion is considered to be of merit in that it is reasonable to conclude that the applicant made a simple and honest mistake regarding the date she first entered this country approximately eighteen years ago at the interview on July 6, 2006.

Counsel notes the applicant has provided three documents, the Form I-705 affidavit, the separate employment affidavit, and a letter dated September 30, 1988 signed by [REDACTED] that is contained within the Service's Information Digest #102, with [REDACTED] signature all validating her employment with him, all during the same time period. Further, the record contains no evidence to establish that a forensic analysis was performed to compare the signatures on the applicant's employment documents with authentic signature exemplars provided by [REDACTED]. Consequently, the AAO's prior determination on remand that the signature discrepancy is minimal is reiterated and it cannot be concluded that there exists a visible and significant difference between the purported signatures of [REDACTED] on the applicant's supporting documentation and signature exemplars obtained from [REDACTED]. Moreover, the record contains no other adverse evidence relating to claims of agricultural employment for farm labor contractor [REDACTED].

The inference to be drawn from the documentation shall depend on the extent of the documentation, its credibility and amenability to verification. If an applicant establishes that he has in fact performed the requisite qualifying agricultural employment by producing sufficient evidence to show the extent of that employment as a matter of just and reasonable inference, the burden then shifts to USCIS to disprove the applicant's evidence by showing that the inference drawn from the evidence is not reasonable. 8 C.F.R. 210.3(b)(1).

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 USCIS has not obtained information which would refute the applicant's evidence, the applicant satisfies the requirements

for the SAW program with respect to the work eligibility criteria. *United Farm Workers (AFL CIO) v. INS*, Civil No. S 87 1064 JFM (E.D. Cal.).

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 is eligible for adjustment to temporary resident status as a special agricultural worker.

ORDER: The appeal is sustained.