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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date **AUG 24 2010**

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:

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.

Eireath McCormack

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application for temporary resident status as a special agricultural worker was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application, finding the applicant failed to establish that he performed at least 90 man-days of qualifying agricultural employment during the eligibility period. More specifically, the director determined that the applicant had failed to respond to a request for additional evidence.

On appeal, the applicant asserts that he did respond to the director's request for additional evidence and submits additional claims of employment during the qualifying period 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, provided he is otherwise admissible under the provisions of section 210(c) of the Act and is 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 application, Form I-700, the applicant claimed to have performed the following employment for [REDACTED] in San Diego, California from May 1, 1985 to May 1, 1988 pruning, weeding, watering, fertilizing and spraying citrus trees for 138 man-days. In support of the claim, the applicant submitted a Form I-705 affidavit signed by [REDACTED]

On April 20, 1992, the director, Western Service Center, issued a notice of intent to deny, stating that the applicant gave a contradictory sworn statement to the Service in El Paso, Texas, stating his first date of entry was March 7, 1986. On May 18, 1992, the applicant responded to the notice, stating he had never been interviewed by the Service in El Paso, Texas.

On June 26, 1992, the director denied the application, finding the applicant had failed to respond to the notice of intent to deny. This finding shall be withdrawn.

On appeal, the applicant submitted a declaration from [REDACTED] stating that he had employed the applicant as a yard worker in the months May through September 1985 for a total of 48 days. The applicant submitted a declaration from [REDACTED] stating that the applicant had worked for him as a yard worker for a total of 48 days during the months October 1985 to March 1986.

An applicant must have engaged in qualifying agricultural employment, which has been defined as "seasonal agricultural services," for at least 90 man-days during the twelve-month period ending May 1, 1986, pursuant to 8 C.F.R. § 210.1(h).

Section 210(h) of the Act, 8 U.S.C. 1160, defines "seasonal agricultural services" as the performance of field work related to the planting, cultural practices, cultivating, growing, and harvesting of fruits and vegetables of every kind and other perishable commodities, as defined in regulations by the Secretary of Agriculture.

The applicant's claimed employment in landscaping as a yard worker is non-qualifying since such commodity is not set forth as a fruit, vegetable or other qualifying perishable commodity in 7 C.F.R. § 1d.7.

On April 1, 1999, the Administrative Appeals Office remanded the case, finding that the applicant's sworn statement dated August 6, 1988, was not entered into the record of proceeding. The AAO further noted that on appeal the applicant put forth additional employment claims during the qualifying period. The director forwarded the record along with the applicant's prior [REDACTED] back to the AAO for review. The director noted that the sworn statement had been included in the prior A-file. However, the AAO did not find the sworn statement in the record. The AAO noted that the record contained a Form I-213, Record of Deportable Alien, dated August 25, 1987, which contradicted the applicant's claim to have performed agricultural employment during the qualifying period but that the director had failed to mention it in his Notice of Intent to Deny, so the AAO again remanded the case.

The director issued a second NOID to the applicant at his address of record, finding that the record contained evidence in a Form I-213 that on January 3, 1987, the applicant was apprehended by a Border Patrol Agent and informed the agent that he first entered the United States on April 1, 1981, returned to Mexico in December 1981, reentered the United States in March 1982, left for Mexico in May 1982 and last reentered the United States on January 3, 1987. The director further noted that this evidence was inconsistent with the applicant's claim of performance of labor in the United States during the qualifying period. The NOID was returned as "unclaimed." The director denied the application and forwarded the file to the AAO.

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)*, Civil No. S-87-1064-JFM (E.D. Cal.).

The applicant has failed to credibly establish the performance of at least 90 man days of qualifying agricultural employment during the twelve month 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.