



U.S. Citizenship
and Immigration
Services

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FILE:

Office: VERMONT SERVICE CENTER

Date:

FEB 27 2010

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IN RE:

Applicant:

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:

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.

Elizabeth McCormack

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application for temporary resident status as a special agricultural worker was denied by the Director, Eastern Regional Processing 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. This decision was based, in part, on adverse information acquired by the Service relating to the applicant's claim of employment for [REDACTED]

On appeal, the applicant asserts that the adverse information does not specifically prove that [REDACTED] affidavit regarding the applicant's employment was false. He further asserts that the burden of proof is on the government to show that the applicant does not meet the requirements for special agricultural worker status. The applicant requested a copy of the record of proceedings. The request was processed on August 17, 1992 and again on May 15, 2000.

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] at [REDACTED] 140 days planting, harvesting, and cultivating strawberries, cabbage and tomatoes. In support of the claim, the applicant submitted a letter and an affidavit from [REDACTED], stating he was one of three owners of [REDACTED] located at [REDACTED] and that the applicant worked for him for 140 days with perishable commodities between April 15, 1985 and October 25, 1985.

In the course of attempting to verify the applicant's claimed employment, the Service acquired information that contradicted the applicant's claim. On July 17, 1989, [REDACTED] pled guilty to conspiracy to make and use false documents in a matter within the jurisdiction of the U.S. Immigration and Naturalization Service.

On August 21, 1990, the applicant was advised in writing that a federal grand jury had indicted [REDACTED] and several others with a conspiracy to make false statements to the INS. The indictment charged that the conspirators produced over 1,000 documents falsely stating that the aliens had been employed as seasonal agricultural workers. The Service further advised the applicant that on July 17, 1989, [REDACTED] pled guilty to one count of conspiracy to make and use false documents. The Service informed the applicant that they had contacted the owners of the property at [REDACTED] and that the owners stated that [REDACTED] had not farmed at [REDACTED]. The applicant was granted thirty days to respond and was advised of the

Service intent to deny his application. The letter of intent to deny was returned as "undeliverable." The applicant failed to respond to the notice.

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 fact that [REDACTED] pled guilty to conspiracy to make and use false documents and that he had provided individuals with false affidavits, directly contradicts the applicant's claim. The applicant has not overcome this adverse evidence. He submitted additional affidavits from friends and relatives, but the affidavits were vague on details, and therefore lack probity. On appeal counsel asserts that the adverse information does not specifically prove that [REDACTED] affidavit and letter attesting to the applicant's employment is false. Nonetheless, the evidence seriously undermines the credibility of the applicant's assertions.

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.