

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

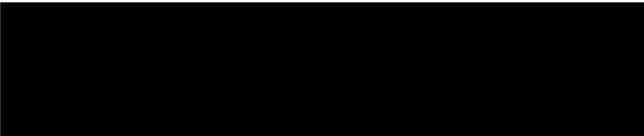
PUBLIC COPY

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

L₁



FILE: [REDACTED]
XSD-81-401-02338

Office: CALIFORNIA SERVICE CENTER

Date: **JAN 07 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.

Perry Rhew
Chief, Administrative Appeals Office

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

In a decision dated September 4, 1992, the director denied the application for Special Agricultural Worker Group 2 status because the applicant failed to establish the performance of at least 90 man-days of qualifying agricultural employment during the 12-month period ending on May 1, 1986. This determination was based on adverse information regarding the applicant's claim of employment for [REDACTED] at [REDACTED]. Specifically, [REDACTED] co-owner of [REDACTED] stated in a letter to United States Citizenship and Immigration Services (USCIS) that [REDACTED] was employed as a farm labor contractor with [REDACTED] during May 1985 only. The director noted that information is inconsistent with the information that the applicant provided on her Form I-705 indicating that she was employed by the affiant, [REDACTED] for 147 man-days total, 71 with [REDACTED]. These inconsistencies are material to the applicant's claim in that they have a direct bearing on the applicant's eligibility. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the application. *Id.* at 591.

The applicant appealed and the AAO remanded upon the request of the director. On remand, the director fulfilled the applicant's request for information under the Freedom of Information Act (FOIA). The record indicates that the FOIA request was processed on May 11, 2009.¹ USCIS reopened his case for entry of a new decision, and returned the record to the AAO for resolution of the appeal.

On appeal, the applicant indicates that she worked for [REDACTED] at [REDACTED] harvesting and weeding cantaloupes. She submitted two letters. The first letter dated July 25, 1995, signed by [REDACTED] indicates that the applicant was employed during the period May 1984 until May 1986 as an agricultural worker and that company records are not available. The affiant does not indicate how many man-days the applicant worked. The second letter, dated November 1, 1991 is signed by [REDACTED]. [REDACTED] indicates that the applicant was employed for 90 man-days from May 1985 until May 1986 harvesting and weeding cantaloupes. Neither employer is listed on the applicant's Form I-700, and [REDACTED] employment is not referenced by the applicant on appeal. Nothing more has been submitted for the record.

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

¹ NRC2008004391

210(c) of the 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).

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... if the Service [now CIS] has not obtained information which would refute the applicant's evidence, the applicant satisfies the requirements for the SAW [special agricultural worker] program with respect to the work eligibility criteria. *United Farm Workers (AFL CIO) v. INS*, Civil No. S 87 1064 JFM (E.D. Cal. June 15, 1989).

Given the inconsistencies noted above, the applicant has failed to establish by a preponderance of the evidence that she is eligible for legalization as a special agricultural worker. 8 C.F.R. § 210.3(d)(3). Furthermore, she has failed to address or rebut the findings of USCIS regarding the testimony and credibility of [REDACTED] the principal affiant in this case.

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