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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
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FILE:

XNK 89-059-0004

Office: CALIFORNIA SERVICE CENTER

Date: MAR 05 2010

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, Western Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because 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 on adverse information acquired by the Service relating to the applicant's claim of employment for [REDACTED]

On appeal, counsel for the applicant asserts that the fact that [REDACTED] admitted to creating fraudulent documents for approximately 4,000 individuals does not negate the fact that he employed agriculturally workers and does not mean the applicant's documentation was fraudulent.

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 a single employer, [REDACTED], 118 days picking and pruning grapes between May 1985 and May 1986 in Tulare, California.

In support of the claim, the applicant submitted a Form I-705 affidavit signed by [REDACTED]

In a notice of intent to deny (NOID) dated August 29, 1991, the director informed the applicant that [REDACTED] signature on the Form I-705 did not match exemplars of [REDACTED] signature in the director's possession. Subsequently, the director denied the application. On appeal to the Administrative Appeals Office (AAO), the AAO remanded the case, finding that in the absence of a forensic report, the Service could not base its decision on the exemplars. The AAO further noted that [REDACTED] was convicted on April 3, 1989, of violating section 1160(b)(7)(iii) of the United States Code, relating to document fraud in the special agricultural worker program. The AAO recommended that the director advise the applicant of such adverse evidence and allow him to submit a rebuttal.

The director issued a second NOID, advising the applicant that [REDACTED] pled guilty to conspiracy to create false immigration documents on August 31, 1988 and admitted he had created and sold approximately 4,000 false writings and documents for use by applicants for Special Agricultural Worker status. The director further advised the applicant that [REDACTED] was convicted on April 3, 1989 of violating 8 U.S.C. 1160(b)(7)(ii), which pertains to

document fraud in the special agricultural worker program, therefore [REDACTED] affidavit lacked credibility.

In response to the NOID, the applicant submitted his own affidavit and those of former co-workers [REDACTED] and [REDACTED]. He also submitted an affidavit from [REDACTED] [REDACTED] who stated he employed the applicant from February 1985 through December 1988 as a handyman. In a final decision, the director noted that [REDACTED] testimony contradicted that of the applicant, [REDACTED] and co-workers. The director concluded the applicant had not overcome the adverse information, and denied the application.

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] was convicted of document fraud related to the special agricultural worker program seriously undermines the credibility of his testimony. The applicant has not overcome this adverse evidence. Further, he provided some inconsistent testimony regarding his employment during the requisite period. As such, the documentary evidence submitted by the applicant cannot be considered as having any probative value or evidentiary weight.

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.