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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**

L2

FILE:

Office: DALLAS

Date:

AUG 11 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, Dallas District Office, 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 file a complete application within 90 days of his initial application.

On appeal, the applicant asserts that he had not received any correspondence from United States Citizenship and Immigration Services (USCIS) and asked for further instructions.

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] over 90 man-days between January 1985 and April 1986.

In support of the claim, the applicant submitted an affidavit signed by [REDACTED], asserting the applicant worked for him for [REDACTED] performing seasonal agriculture. This affidavit is not consistent with the information provided by the applicant on his Form I-700, which states he worked for [REDACTED]. The Form I-700 indicates that the applicant needs to list employment in perishable commodities from May 1, 1983 through May 1, 1986. The applicant did not list [REDACTED] as an employer on his Form I-700.

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.

Beyond the decision of the director, the evidence in the record indicates that the applicant was charged and convicted on two counts: *aiding and abetting aliens illegal entry*, in violation of 8 U.S.C. § 1325 and 18 U.S.C. § 2 on or about March 5, 1980. According to an FBI report based upon the applicant's fingerprints, he was arrested on May 26, 1981 and subsequently convicted of *driving while intoxicated* in Centerville, Texas.

An applicant is ineligible for temporary residence if he or she has been convicted of any felony or three or more misdemeanors in the United States. 8 C.F.R. § 210.3(d)(3). The record shows that the applicant has three misdemeanor convictions; therefore, he is ineligible for this additional reason.

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