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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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FILE:

XEL-88-100-3036

Office: TEXAS SERVICE CENTER

Date:

JAN 27 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:

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 applicant's temporary resident status as a special agricultural worker was terminated by the Director, Southern Service Center, and is now before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The applicant's temporary resident status as a special agricultural worker was terminated on June 27, 1991. The applicant appealed requesting a copy of the record of proceedings under the Freedom of Information Act (FOIA). 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)¹ on July 29, 2009 and returned the record to the AAO for resolution of the appeal.

As stated by the director in the Notice of Intent to Terminate (NOIT) dated November 27, 1990, the applicant submitted an I-700 which was subsequently approved on June 1, 1987. Subsequent to the approval of the applicant's temporary resident status, United States Citizenship and Immigration Services (USCIS) received adverse information regarding the applicant's eligibility which caused to the director to terminate the applicant's temporary resident status.

The applicant submitted information in support of his Form I-700 that he worked for [REDACTED] as a temporary agricultural worker at the [REDACTED] from May 1987 until December 1987 for 100 man-days; from August 1986 until November 1986 for a total of 54 man-days and from June 1985 until December 1985 for a total of 100 man-days. The applicant also submitted several affidavits. The director determined that the applicant had met his burden of proof and the applicant was granted temporary resident status as a special agricultural worker on June 1, 1987.

However, on June 26, 1989, the applicant was detained by United States Customs and Border Patrol (USCBP). According to information furnished to the director, the applicant signed a sworn statement, Form I-215B, indicating that he did not work in agriculture during the relevant period. He indicated that [REDACTED] was a friend and that he had worked for one or two months in 1984 and 1985 but that he primarily worked construction in El Paso, Texas since 1985. The applicant indicated that [REDACTED] prepared the documents fraudulently in exchange for a few beers. The director noted that the applicant was, therefore, not eligible for temporary resident status as a special agricultural worker and the applicant's status was terminated on June 27, 1991.

On appeal, the applicant indicates that he was coerced into signing the statement submitted by USCBP and that he did work the necessary man-days for [REDACTED] to qualify for seasonal agricultural worker benefits. He submits additional affidavits in support of his work for [REDACTED].

¹ NRC2008046774

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 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).

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) (“On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.”); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO’s *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). Following a *de novo* review of the record the AAO finds that the applicant has not overcome the director’s basis for termination of his status. While he submits that he was coerced into signing a document indicating that he willfully misrepresented his agricultural work during the relevant period, he does not submit any evidence that he was coerced. In fact, the record indicates that the applicant was provided with an opportunity to appear before a Special Inquiry Officer (SIO), however, the applicant declined the hearing and instead, chose to withdraw his application for entry and return to Mexico. While the applicant has submitted several affidavits indicating that he worked for [REDACTED] during the relevant period, he has failed to establish that his testimony before USCBP was in any way false or coerced. 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. In this case, the applicant has not established that his sworn testimony was false or that he did not, in fact, willfully misrepresent his eligibility for the benefit sought.

Section 212(a)(6)(C) of the Act provides:

Misrepresentation. – (i) In general. – Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

The applicant has failed to establish credibly the performance of at least 90 man-days of qualifying agricultural employment during the twelve-month statutory period ending May 1, 1986. Consequently, the applicant is ineligible for temporary resident status as a special agricultural worker and the termination of his status by the director, was proper.

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