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U.S. Department of Homeland Security
20 Massachusetts Ave. NW, Rm. A3042
Washington, DC 20529



U.S. Citizenship and Immigration Services



L4

FILE:



Office: CALIFORNIA SERVICE CENTER

Date: 10/10/08

IN RE:

Applicant:



PETITION:

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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

Robert P. Wiemann, Director
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 the performance of at least 90 man-days of qualifying agricultural employment during the statutory period. This determination was based on adverse information acquired by the Service relating to the applicant's claim of employment for John L. Johnson.

On appeal, the applicant reaffirms his original claim to have performed 90 man-days of qualifying agricultural services for [REDACTED] provided by the applicant during his legalization interview, and claims to have also worked for [REDACTED] during the qualifying period for [REDACTED].

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 the alien is otherwise admissible under 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 Form I-700 application, the applicant claimed 121 man-days for [REDACTED] in Yuma, Arizona from May 1, 1985 to May 1, 1986.

In support of the claim, the applicant submitted a corresponding Form I-705 affidavit and a separate employment letter, both signed by [REDACTED].

In attempting to verify the applicant's claimed employment, the Service acquired information which contradicted the applicant's claim. [REDACTED] and four co-defendants were convicted by jury trial of seventeen felony counts of Conspiracy, Aiding and Abetting, and the Creation and Supplying of False Application Documents for Adjustment of Status in U.S. District Court, Phoenix, Arizona. [REDACTED] In addition, a Service investigation revealed that [REDACTED] the applicant's purported employer, did not employ or supervise agricultural employees in any capacity during the qualifying period. Furthermore, Yuma County tax and real estate records indicate that there was no agricultural land in Yuma County that was owned or operated by John L. Johnson.

On January 17, 1992, the applicant was advised in writing of the adverse information obtained by the Service, and of the Service's intent to deny the application. The applicant was granted thirty days to respond. In response, the applicant submitted a statement in which he indicated that he had been unable to locate [REDACTED] to acquire additional evidence to corroborate his claimed employment, but that he had been able to locate another employer for whom he had worked. The applicant stated that he had not been able to locate this new employer at the time he filed his initial claim. The applicant submitted a second Form I-705 affidavit and a new employment letter, both signed by [REDACTED]. [REDACTED] indicated that the applicant worked 95 man-days harvesting lettuce at Husson Farm in Yuma, Arizona from January 1986 to April 1986..

The director concluded the applicant had not overcome the derogatory evidence, and denied the application on February 24, 1992.

On appeal, the applicant reaffirms his new claim of employment for [REDACTED] stating, that he did not claim it before because he could not locate [REDACTED] and because he had already claimed sufficient man-days to qualify.

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).

An applicant raises questions of credibility when asserting an entirely new claim to eligibility on appeal. The applicant provides no credible explanation as to why his claim to have been employed by [REDACTED] during the qualifying period was not advanced on the I-700 application, or during the legalization interview. The

instructions to the application do not encourage applicants to limit their claims; rather, applicants are encouraged to list multiple claims, as they are instructed to show the most recent employment first. Further, as the applicant has not contested the finding that his initial claim was false, his overall credibility is suspect. Larger issues of credibility arise when an applicant claims employment which is called into question through Service investigation, and later attempts to establish eligibility with a different employer, heretofore never mentioned to the Service. For this reason, the applicant's new claim of employment for will not serve to fulfill the qualification requirements necessary for status as a special agricultural worker.

The adverse information acquired by the Service regarding the applicant's alleged employment for directly contradicts the applicant's claim. The applicant has not overcome such derogatory evidence. Thus, the documentary evidence submitted by the applicant cannot be considered as having any probative value or evidentiary weight.

The applicant's initial claim is lacking in credibility due to the adverse evidence. The validity of the applicant's amended claim on appeal must be deemed questionable at best. Under these circumstances, it cannot be concluded the applicant has credibly established that he performed at least 90 man-days of qualifying agricultural employment during the statutory period ending May 1, 1986. Consequently, the applicant has not demonstrated his eligibility for temporary resident status as a special agricultural worker.

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