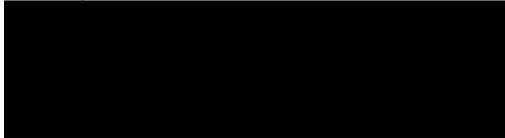




U.S. Citizenship
and Immigration
Services

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

PUBLIC COPY



L4

FILE:



Office: CALIFORNIA SERVICE CENTER

Date: JUL 05 2005

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. The file has been returned to the service center that processed your case. If your appeal was sustained, or if your case 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, remanded by the Legalization Appeals Unit (LAU), now the Administrative Appeals Office (AAO) and again denied by the Director, Western Service Center. The matter is now before the AAO on appeal. The appeal will be sustained.

The applicant appears to be represented. However, the record does not contain a Form G-28 Notice of Appearance as Attorney or Representative. Therefore, the decision will only be provided to the applicant.

In both decisions of denial, 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 eligibility period. The decisions were based on evidence adverse to the applicant's claim of employment for [REDACTED]

On appeal from the director's initial decision, the applicant reasserted her claim to eligibility.

In response to the director's final decision, the applicant submitted a brief from counsel and three employment affidavits from co-workers [REDACTED] and [REDACTED]

A Group 1 special agricultural worker is a worker who has performed qualifying agricultural employment in the United States for at least 90 man-days in the aggregate in each of the twelve-month periods ending May 1, 1984, 1985, and 1986, and has resided in the United States for six months in the aggregate in each of those twelve-month periods. 8 C.F.R. § 210.1(g)

A Group 2 special agricultural worker is a worker who during the twelve-month period ending on May 1, 1986, has performed at least 90 man-days in the aggregate of qualifying agricultural employment in the United States. 8 C.F.R. § 210.1(h)

An applicant for temporary resident status under section 210 of the Act "has the burden of proving by a preponderance of the evidence that he or she has worked the requisite number of man-days, is admissible to the United States... and is otherwise eligible for adjustment of status under this section." 8 C.F.R. § 210.3(b). When something is to be established by a preponderance of evidence it is sufficient that the proof only establish that it is probably true. See generally, McCormick, Evidence sec. 339 (2d ed. 1972).

On her application the applicant claimed 90 man-day of qualifying agricultural employment for [REDACTED] at [REDACTED] in Mendota, California from May 1985 to May 1986.

In an attempt to establish the performance of the requisite qualifying agricultural employment during the eligibility period, the applicant has submitted the following evidence:

- 1) A corresponding Form I-705 affidavit purportedly signed by [REDACTED]
- 2) An employment verification letter purportedly signed by [REDACTED]

On October 4, 1991, the applicant was informed that [REDACTED] signature on his documentation did not appear to match known exemplars of [REDACTED] signature. Based on that conclusion, the director denied the application on December 4, 1991. On appeal, the applicant reaffirmed her claim to eligibility.

September 23, 1994, the LAU determined that the signature discrepancy cited by the director was too minimal to be conclusive without forensic analysis of the signatures and remanded the case for further consideration.

On May 1, 2001, the applicant was again informed of adverse evidence and of the director's intent to deny the application. Specifically, the applicant was informed that forensic analysis had determined that it was highly

probable that the person who signed the exemplars of [REDACTED] signature in the possession of the Service did not sign the applicant's documentation. The director again denied the application on September 25, 2004.

On appeal, counsel for the applicant stated that the applicant had established her burden of proof to eligibility and that the Service must now disprove the applicant's claim. Counsel states that the results of the forensic analysis are inconclusive, and that contrary to the director's assertion in the notice of denial, the applicant has not claimed employment at Pacific Farms and therefore, any adverse evidence relative to Pacific Farms does not apply to this applicant. The applicant submitted three affidavits from [REDACTED] and [REDACTED] all of whom who stated that they and the applicant worked together in the same fields for [REDACTED]. The affidavit from [REDACTED] stated that she was granted permanent residence as an agricultural worker and that she worked with the applicant from May 1985 to May 1986 at "Diff Farms" in Mendota, California. [REDACTED] submitted a photocopy of her Resident Alien card. The applicant also previously submitted a co-worker affidavit from [REDACTED] who attested to the applicant's employment for [REDACTED].

Forensic analysis determined that it was highly probable that the same person did not sign the applicant's documentation and the signature cards used as exemplars of Joe Alarcon's signature. However, the record contains no evidence establishing that it was [REDACTED] who signed the signature cards. The Service has not demonstrated that it, in fact, has true exemplars of [REDACTED] signature. Thus, the forensic analysis does not disqualify the applicant. Further, this applicant has never claimed to having been employed at Pacific Farms and therefore, any adverse evidence relative to [REDACTED] employment at Pacific Farms is not probative.

The documentation submitted by the applicant throughout the application process appears to be consistent and to corroborate the applicant's claim. Such documents, including affidavits submitted by individuals who are willing to testify in this matter, may be accorded substantial evidentiary weight. It is, therefore, concluded that the applicant performed the requisite qualifying agricultural employment during the twelve-month statutory period ending May 1, 1986.

There are no known grounds of ineligibility, and it appears the application should be approved.

ORDER: The appeal is sustained.