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U.S. Citizenship
and Immigration
Services



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FILE:



Office: VERMONT SERVICE CENTER

Date: JUN 27 2005

IN RE:

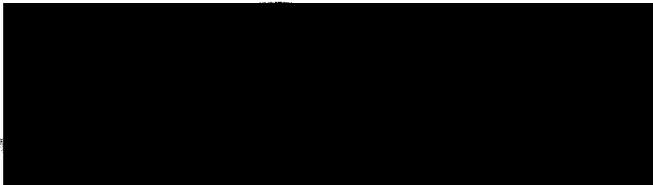
Applicant:



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:



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 District Director, New York, New York, remanded by the Legalization Appeals Unit (LAU), now the Administrative Appeals Office (AAO) and denied again by the Director, Eastern Service Center. The matter is now before the AAO on appeal. The appeal will be dismissed.

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 district director's decision, the applicant submitted a statement from counsel, which contained assertions that were unrelated to the denial of the application. The applicant did not submit any additional evidence.

The appeal taken from the previous decision of denial still being in effect, the applicant's counsel responded to the center director's decision with a statement asserting that the absence of the applicant's name on the list of individuals who worked for [REDACTED] was not sufficient to deny the application because it was known that agricultural employers kept incomplete records.

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).

On the Form I-700 application, the applicant claimed to have performed 99 man-days of qualifying agricultural employment for [REDACTED] at Parker Farms from November 1985 to April 1986.

In support of the claim, the applicant submitted a corresponding Form I-705 affidavit and three separate form employment letters, all purportedly signed by [REDACTED]. The applicant submitted a man-days breakdown, a payroll journal and a photocopied farm labor contractor certificate of registration made out to Annie G. Mason. In addition, the applicant submitted a letter from a co-worker [REDACTED] who stated that he and the applicant worked together on Parker Farms from October 1985 to April 1986, and a letter of residence.

In attempting to verify the applicant's claimed employment, the Immigration and Naturalization Service, or the Service (now, Citizenship and Immigration Services, or CIS) acquired information which contradicted the applicant's claim. Specifically, [REDACTED] pled guilty to violations of 18 USC 371 and 8 USC 1160, conspiracy to supply fraudulent documentation to Special Agricultural Worker applicants. In a sworn statement [REDACTED] stated that only fourteen (14) individuals worked for her on three farms, including [REDACTED] and [REDACTED] provided CIS with a list of the names those individuals who worked for her. The applicant is not one of the named individuals who worked for Annie Mason.

On May 31, 1989, the district director denied the application. On November 5, 1990, the LAU remanded the case because the applicant had not been apprised of the adverse evidence prior to the denial of the application.

Subsequently the application was reopened and on January 22, 1991, 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 she asserted that farm labor contractors tended to denounce their workers when faced with investigations and that this was what [REDACTED] did, threw her to the wolves. The applicant submitted a form affidavit with spaces for the insertion of the applicant's name, purportedly signed by [REDACTED] indicated that "the above mentioned worked" referring to the applicant as "he." The record indicates that the applicant is female.

The center director concluded the applicant had not overcome the derogatory evidence, and denied the application on June 13, 1991.

In response to the center director's decision, counsel for the applicant asserted that the absence of the applicant's name on the list of individuals who worked for Annie G. Mason was not sufficient to deny the application because it was known that agricultural employers kept incomplete records.

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). 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) v. INS*, Civil No. S-87-1064-JFM (E.D. Cal.).

The applicant's claim that [REDACTED] disavowed her claim because of an investigation is not corroborated by any documentary evidence and therefore, must be viewed as conjecture. Furthermore, this statement is contradicted by the purported employment verification statement from [REDACTED] submitted at the same time as the applicant's statement. This affidavit however, cannot be deemed credible as it was obviously not originally intended for this applicant. Although, claimed by the applicant, there is no evidence that [REDACTED] did not keep employment records. Rather, the evidence of record clearly demonstrates that she was able to identify those individuals, who did work for her.

[REDACTED] pled guilty to violations of 18 USC 371 and 8 USC 1160, conspiracy to supply fraudulent documentation to Special Agricultural Worker applicants. In a sworn statement made by [REDACTED] she stated that only fourteen (14) individuals worked for her on three farms, O.R. Parker & Sons, W.T. Carpenter and Byrd Food [REDACTED] provided CIS with a list of the names of those individuals who worked for her. The applicant is not one of the named individuals who worked for [REDACTED]. The applicant has failed to overcome this adverse evidence, which directly contradicts her employment claim. Therefore, 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 statutory 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.