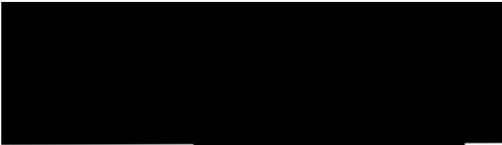


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Services

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FILE:



Office: NEBRASKA SERVICE CENTER

Date: **AUG 16 2006**

XPD-88-234-1106

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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for temporary resident status as a special agricultural worker was denied by the Director, Northern Regional Processing Facility. On April 11, 1994, the Administrative Appeals Office (AAO) remanded the case to the Northern Service Center because the applicant had requested a copy of the record of proceeding. On May 11, 2005, a copy of the ROP was sent to the alien at his address in Salt Lake City, Utah, and returned as undeliverable on May 23, 2005. The matter is now before the 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 eligibility period. This determination was based on information provided by [REDACTED] and [REDACTED] for whom the applicant claimed to have worked.

On appeal, the applicant reaffirmed his qualifying agricultural services for the [REDACTED]. The applicant stated that he would return to Oregon to obtain additional proof of his employment.

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 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 93 man-days of qualifying agricultural services for Fred and [REDACTED] at [REDACTED] in Clackamas County, Oregon, from May 15, 1985 to May 1, 1986. In support of the claim, the applicant submitted a Form I-705 affidavit and a separate employment letter, both purportedly signed by [REDACTED]. The applicant claimed no other employment on his application.

The applicant was then interviewed by an officer of the Service. The notes of the officer who conducted the applicant's legalization interview do not indicate that the applicant claimed employment for anyone other than the [REDACTED] during the qualifying period.

In attempting to verify the applicant's claimed employment, the Service acquired information which contradicted the applicant's claim. In the United States District Court for the District of Oregon, [REDACTED] pled guilty to conspiracy to falsify and sell thousands of affidavits attesting to employment on his farm. As part of his plea agreement, [REDACTED] gave sworn statements in which they provided, based on their records and memory, a list of 31 names of individuals who did in fact actually perform at least 90 man-days of qualifying agricultural employment for them. They also provided another list of 101 names of individuals (again based on their memory and records) they believed worked for them, but for less than 90 days. The applicant's name does not appear on either list. Both [REDACTED] also stated that they have no other records, documentation or personal recollection which would support any other Form I-705 affidavit. Several thousand aliens are known to have filed applications claiming to have performed 90 or more man-days of employment for the [REDACTED].

On February 1, 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 letter in which the applicant stated that he was hired to work on the [REDACTED] by a man called "[REDACTED]," whom he considered to be his foreman. He stated that he was never paid directly by the [REDACTED], but by [REDACTED]. The applicant also submitted a hand drawn map of [REDACTED]. The applicant submitted a letter from [REDACTED] who stated that he employed the applicant and others for two weeks in late February 1985. He further stated that he employed him about the same time of year in 1986. He stated that he hired the applicant full-time two years later. The applicant submitted a letter from [REDACTED] who testified that he saw the applicant in early 1985 and then later in 1986.

The director concluded the applicant had not overcome the derogatory evidence, and denied the application on July 15, 1991. On appeal, the applicant reaffirms his claim to have worked for the [REDACTED].

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.), June 15, 1989.

While the applicant reiterates his employment claim for the [REDACTED] on appeal, he has provided no documentation whatsoever to rebut the adverse evidence. In light of that, the guilty plea of [REDACTED] and the fact that a massive number of applicants all claimed to have worked for the [REDACTED] at the same time, it is concluded the applicant has failed to establish the performance of at least 90 days of employment for the [REDACTED].

If [REDACTED] statement is acceptable, the applicant worked for him for only a few weeks, in February and March 1986, during the twelve-month eligibility period ending on May 1, 1986.

The applicant has failed to 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.

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