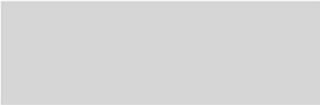




U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: JUL 23 2015

FILE: [REDACTED]  
APPLICATION RECEIPT#: [REDACTED]

IN RE: Applicant: [REDACTED]

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:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

Thank you,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Northern Regional Processing Facility (now known as the Nebraska Service Center) denied the application for temporary resident status as a special agricultural worker (SAW). The matter is now before the Administrative Appeals Office on appeal. The appeal will be sustained.

The director denied the application for Group 2 status because the applicant failed to establish the performance of at least 90 man-days of qualifying agricultural employment during the twelve-month eligibility period. This decision was based on adverse information relating to the applicant's claim of employment for [REDACTED] at [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, and must be otherwise admissible under the provisions of 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 stated that he performed 145 man-days from May 1985 to April 1986 working for [REDACTED] at [REDACTED] harvesting and picking vegetables. In support of his claim, the applicant submitted a Form I-705 Affidavit signed by [REDACTED] who identified himself as a foreman for [REDACTED]. Mr. [REDACTED] indicated that the applicant worked for [REDACTED] (also known as [REDACTED] or [REDACTED]) for approximately 145 days from May 1, 1985 to April 30, 1986, harvesting and picking spinach, radishes, squash, cucumbers, green beans, and turnips.

In his decision dated March 6, 1991, the director indicated that an examination of [REDACTED] employee and payroll records for 1985 and 1986 revealed that [REDACTED] was employed from April 23, 1986 to July 23, 1986. The director determined that in view of this information any Forms I-705 signed by [REDACTED] verifying more than eight days of employment at [REDACTED] between May 1985 and May 1986 cannot be considered credible.

The record also contains the following:

- An affidavit notarized May 10, 1995, from the applicant reiterating his agricultural employment of over 90 man-days at [REDACTED] during the twelve-month period ending May 1, 1986. The applicant indicated that [REDACTED] was his crew leader and that he was paid in cash.
- A copy of a Master Exhibit prepared for submission with applications under the SAW program involving [REDACTED] after meetings with the former director of the Nebraska Service Center, which includes but is not limited to:
  - Portions of the transcript in the case of *United States of America vs. [REDACTED]* Criminal Action No. [REDACTED] (1991). The transcript includes the testimony of [REDACTED] who indicated that he

was a field foreman at [REDACTED] and was in charge of the farm payroll. Mr. [REDACTED] indicated that he worked at [REDACTED] from April to December 1985 and March to June 1986; that his responsibilities included hiring and firing migrant farm workers who worked in the field; that in addition to himself, there were approximately seven or eight other field foremen who supervised between 40 and 60 workers at any given time.; that he and [REDACTED] were responsible for supervising 150 to 200 workers at a time; that from the beginning to the end of the season in 1985, he estimated there were from 600 to 1000 field workers at [REDACTED], that [REDACTED] payroll procedures involved him writing a check, Mr. [REDACTED] signing the check, and he using the funds from the check to pay the workers in cash; and that records of field workers paid in cash were destroyed. [REDACTED] 1991).

- [REDACTED] testimony taken on February 6, 1991, which he testified that [REDACTED] was in his employ at [REDACTED]. Mr. [REDACTED] in his testimony, stated that he does not “know too much about [REDACTED]. I see where he worked for us there, but I don’t remember him.”
- An affidavit notarized May 3, 1995, from [REDACTED] area director for the [REDACTED] Kansas field office of [REDACTED] since 1981. Ms. [REDACTED] indicated that she conducted outreach services by making field visits to register workers at their place of employment, including [REDACTED] that she knew [REDACTED] and [REDACTED] as workers with supervisory responsibilities for employees of [REDACTED] that during the SAW period, she observed Mr. [REDACTED] and Mr. [REDACTED] and other supervisory workers on the premises of [REDACTED] that these supervisory workers, including Mr. [REDACTED] and Mr. [REDACTED], were familiar with the migrant and seasonal farm workers employed by the business and that after Mr. [REDACTED] became the owner of [REDACTED], [REDACTED] and [REDACTED] continued to exercise direct control over the crew leaders, and she did not recall ever seeing Mr. [REDACTED] in the fields.
- An affidavit notarized May 3, 1995, from [REDACTED] executive director of [REDACTED], supporting the affidavit of her employee, [REDACTED].
- An affidavit notarized May 5, 1995, from [REDACTED] nurse coordinator of the migrant health program from 1978 until June 1994. Ms. [REDACTED] indicated that she conducted the outreach program at several fields including [REDACTED] that from her field visits, she knew Mr. [REDACTED] and Mr. [REDACTED] as long-standing workers at [REDACTED] that, during the period from May 1, 1985 to May 1, 1986, she observed Mr. [REDACTED] and Mr. [REDACTED] in the fields at [REDACTED] supervising migrant and seasonal farm workers.
- Affidavits notarized May 5, 1995, from Sister [REDACTED] assistant administrator for [REDACTED]. Sister [REDACTED] indicated that between May 1, 1985 to September 1,

1985, during her field visits to [REDACTED] she became acquainted with the applicant; that she met and continued long-standing acquaintances with field workers as well as supervisors; and that she is aware Mr. [REDACTED] and Mr. [REDACTED] were supervisors of [REDACTED] workers.

- Three affidavits from farmer [REDACTED] stating that he has been introduced to [REDACTED] by [REDACTED] who referred to Mr. [REDACTED] as his general manager. Mr. [REDACTED] indicated that he had been introduced to Mr. [REDACTED] and Mr. [REDACTED] by Mr. [REDACTED], who referred to them as field foremen who would supervise the work of Mr. [REDACTED]'s acreage.

The testimony and affidavits from the above affiants tend to show that not all individuals who performed qualifying employment for [REDACTED] during the requisite period were documented in the company's records. The record reflects that Mr. [REDACTED] was employed by [REDACTED] throughout the requisite period and, as a result, was in a position to confirm the employment of field workers during that time. The record contains no sworn statement, admission, record of conviction or other indication which would lead to a conclusion that the applicant did not work as claimed. The Form I-705 signed by [REDACTED] is sufficient to corroborate the applicant's claim to have performed the requisite number of man-days of qualifying employment during the twelve-month period ending May 1, 1986.

The inference to be drawn from the documentation shall depend on the extent of the documentation, its credibility and amenability to verification. If an applicant establishes that he has in fact performed the requisite qualifying agricultural employment by producing sufficient evidence to show the extent of that employment as a matter of just and reasonable inference, the burden then shifts to the Service to disprove the applicant's evidence by showing that the inference drawn from the evidence is not reasonable. 8 C.F.R. § 210.3(b)(1).

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... if the Service has not obtained information which would refute the applicant's evidence, the applicant satisfies the requirements for the SAW program with respect to the work eligibility criteria. *United Farm Workers (AFL-CIO) v. INS*, Civil No. S-87-1064-JFM (E.D. Cal.).

The applicant has proven by a preponderance of the evidence that he engaged in qualifying agricultural employment for at least 90 man-days during the 12-month period ending May 1, 1986. Consequently, the applicant is eligible for adjustment to temporary resident status as a special agricultural worker.

**ORDER:** The appeal is sustained.