



U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: JUL 30 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:

NO REPRESENTATIVE OF RECORD

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, Western (now California) Service Center denied the application for temporary resident status as a special agricultural worker. The matter is now before the Administrative Appeals Office on appeal. The appeal will be sustained.

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 one year eligibility period ending May 1, 1986. This determination was based on evidence adverse to the applicant's claim of employment at the [REDACTED]

On appeal, the applicant submits a statement prepared on his behalf, asserting that he did not receive the Notice of Intent to Deny or the decision denying the application; that he requests an oral interview; that he met his burden of proof by providing affidavits signed by co-workers who adjusted to permanent resident status; and that he was paid off the books in cash and the records are no longer available. The applicant submits additional evidence to supplement the appeal.

The applicant also requests a copy of the record of proceedings and an additional 30 days to supplement the appeal upon receipt of the record. The record reflects that the applicant's request [REDACTED] was closed on August 28, 2014 for failure to comply.

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 over 90 man-days of agricultural employment picking tomatoes and cucumbers for [REDACTED] in [REDACTED] California, from May 1, 1985 to January 1, 1986. It is noted the application was completed by [REDACTED]. In support of the employment claim, the applicant submitted:

- A Form I-705 affidavit signed by the secretary for [REDACTED] who indicated that the applicant worked 22 man-days during the qualifying period.
- An unsigned Form I-705 affidavit purportedly completed by [REDACTED] who indicated his relationship to the applicant as a person compiling information for an undocumented worker. The affidavit indicated that the applicant worked over 90 man-days for [REDACTED] from May 1, 1985 to January 1986, and that it is supported by coworker affidavits.
- Affidavits from two individuals who claim to be farmers.
- An affidavit from a catering merchant, who indicated that the applicant was employed by [REDACTED] at [REDACTED] from May 1, 1985 to May 1, 1986.
- An affidavit from affiant claiming to be a clothing merchant, who attested to the applicant's employment of over 90 days from January 1985 to April 1986 at [REDACTED]

- Form affidavits from two affiants claiming to be farm workers, who stated to their personal knowledge the applicant worked from April 1985 to January 1986 for [REDACTED] at [REDACTED]. The affiants did not claim to have worked with the applicant.

In the course of attempting to verify the applicant's claimed employment, the legacy Immigration and Naturalization Service (INS) acquired information that contradicted the applicant's claim. A detailed analysis of the payroll records of [REDACTED] was conducted, and the records indicated that the applicant worked no more than 42 man-days during the qualifying period.

On October 1, 1991, the applicant was advised in writing of the adverse information the INS had obtained and of its intent to deny the application. The applicant was granted thirty days to respond. The notice, however, was returned as unclaimed. The director determined that the adverse evidence had not been overcome and denied the application on November 12, 1991.<sup>1</sup>

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.

On appeal, the applicant submits an amended affidavit from one of the affiants who previously attested to his employment. The affiant indicates that he resided with and was a co-worker of the applicant at [REDACTED] during the qualifying period.

In viewing this case in a light most favorable to the applicant, it is concluded that the applicant may have worked more than 90 man-days for his employer during the twelve-month eligibility period ending May 1, 1986. The documentation submitted by the applicant throughout the application process appears to be consistent and to corroborate the applicant's claim. Such documents may be accorded substantial evidentiary weight. It is therefore concluded that the applicant has submitted sufficient evidence to establish as a matter of just and reasonable inference the performance of at

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<sup>1</sup> The denial decision notice was also returned as unclaimed. In response to the applicant's inquiry letter dated April 12, 1993, a courtesy copy of the decision was sent to the applicant on April 20, 1993. It is noted that at time the inquiry letter was received, the applicant maintained the same address of record.

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*NON-PRECEDENT DECISION*

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least 90 man-days of qualifying agricultural employment during the twelve-month statutory period ending May 1, 1986.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has been met.

**ORDER:** The appeal is sustained.