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U.S. Citizenship
and Immigration
Services



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FILE: [Redacted]

Office: CALIFORNIA SERVICE CENTER

MAR 11 2005
Date: 11 2005

IN RE: Applicant: [Redacted]

PETITION: 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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter 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 (SAW) was denied by the Director, Western Service Center. A subsequent appeal was remanded by the Legalization Appeals Unit (LAU), now the Administrative Appeals Office (AAO). The application was denied again by the Director, California Service Center. The matter is 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]

Although the applicant did not respond to the more recent decision of denial, his appeal taken from the previous decision of denial is still in effect. In that appeal, the applicant stated that all his documentation was authentic.

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 pruned and weeded vineyards and tomatoes for [REDACTED] at various farms in Mendoza, California for 104 man-days from May 1, 1985 to May 1, 1986.

In support of the claim, the applicant submitted a corresponding Form I-705 affidavit purportedly signed by [REDACTED]

On April 16, 1991, in a Notice of Intent to Deny, the Director, Western Service Center, noted that the Service possessed evidence adverse to the applicant's employment claim. Specifically, the notice stated that the purported signature of [REDACTED] on the applicant's employment documentation did not appear to match the known authentic signatures of [REDACTED] on exemplars in the possession of the Service. The applicant was also advised that the Citizen and Immigration Services (CIS), then the Immigration and Naturalization Service (INS) had contacted [REDACTED] secretary for [REDACTED] and that [REDACTED] had provided CIS with a list of current and former employees who were employed during the qualifying period. The applicant was informed that his name was not on that list. The applicant was accorded 30 days to respond to that evidence. The record contains a signed certified mail return receipt signed by the applicant on April 20, 1991. However, the applicant did not respond.

The Director, Western Service Center, found that the applicant had not overcome the adverse evidence and denied the application. On appeal, the applicant submitted two separate form affidavits from [REDACTED] and [REDACTED], both of whom stated that they had personal knowledge that the applicant worked for [REDACTED] from May 1, 1985 to May 1, 1986.

On March 19, 1996, the AAO remanded the case noting that the signature discrepancy relied upon in denying the application was an insufficient basis for the denial of the application. The AAO further noted that, in her letter, [REDACTED] had indicated that [REDACTED] had difficulty with his supervisors not reporting the names and earnings of employees. Therefore, the list of employees must be considered incomplete and the absence of the applicant's name on the list insignificant. The director was advised that, if he had additional adverse evidence pertaining to the applicant's claimed employment, such evidence should be entered in to the record and that the applicant be advised thereof.

The record reflects that, on July 16, 1999 a documents examiner conducted a forensic analysis of the applicant's Form I-705 affidavit and determined that it was highly probable that the signature on the applicant's document was **not** the signature of [REDACTED]

On February 20, 2001, in a Notice of Intent to Deny, the Director, California Service Center, informed the applicant of the results of the forensic analysis. The applicant was accorded 30 days to respond to that notice, but did not respond.

On September 18, 2001, the Director, California Service Center, denied the application. No further information or documentation has been received from the applicant, or from anyone acting on his behalf. During the ensuing two years from the date of the second Notice of Denial, the applicant has not submitted any statements or documentation to challenge the more recent decision of denial.

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).

No specific type of documentation is required to sustain the applicant's burden of proof. However, the documentation must be credible. Documents which appear to have been forged, or otherwise deceitfully created or obtained, are not credible. United Farm Workers (AFL-CIO) v. INS, Civil No. S-87-1064-JFM (E.D. Cal.).

Forensic analysis has determined that the applicant's Form I-705 affidavit was most probably not signed by [REDACTED]. The affidavits from [REDACTED] submitted on appeal, indicate that the applicant worked for [REDACTED] but fail to indicate just how the affiants acquired such knowledge. Therefore, the affidavits are highly questionable and will not serve to establish the applicant's claim to eligibility.

The signature discrepancy noted by the director calls into question the origin and authenticity of the applicant's documentation. The applicant has not overcome this derogatory evidence. Therefore, the documentary evidence submitted by the applicant cannot be considered as having any probative value or evidentiary weight.

The applicant has failed to establish credibly 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.