



U.S. Citizenship
and Immigration
Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: OCT 21 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:

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application for temporary resident status as a special agricultural worker was denied by the Chief Legalization Officer, Salinas, California. The matter was reopened and again denied by the Director, Western Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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] at Cooperativa Central.

On appeal from the director's initial decision, the applicant submitted two separate Form W-2 Wage and Tax Statements.

A Group 2 special agricultural worker is a worker who during the twelve-month period ending on May 1, 1986, has performed at least 90 man-days in the aggregate of qualifying agricultural employment in the United States. 8 C.F.R. § 210.1(h)

An applicant for temporary resident status under section 210 of the Act "has the burden of proving by a preponderance of the evidence that he or she has worked the requisite number of man-days, is admissible to the United States... and is otherwise eligible for adjustment of status under this section." 8 C.F.R. § 210.3(b). When something is to be established by a preponderance of evidence it is sufficient that the proof only establish that it is probably true. See generally, McCormick, Evidence sec. 339 (2d ed. 1972).

On his application the applicant claimed 220 man-days of qualifying agricultural employment at Cooperativa Central in Monterey, California from April 25 1985 to October 5, 1986.

In an attempt to establish the performance of the requisite qualifying agricultural employment during the eligibility period, the applicant has submitted a corresponding Form I-705 affidavit purportedly signed by [REDACTED] and an employment verification letter purportedly signed by Nicolas Sandoval indicating that the applicant worked from April 25, 1985 to September 30, 1985 and from April 18, 1986 to October 5, 1986.

On August 9, 1988, the Chief Legalization Officer, Salinas, California, determined that the applicant had not credibly established her claim to eligibility and denied the application. Subsequently, on February 21, 1991, the application was reopened. On that date, the applicant was informed that Mr. [REDACTED] signature on her documentation did not appear to match known exemplars of Mr. [REDACTED] signature. Based on that conclusion, the director denied the application on December 4, 1991.

On appeal, from the director's initial decision, the applicant submitted copies of 1985 and 1986 Form W-2 Wage and Tax Statement. The Form W-2 for 1985 indicated that the applicant had earnings of \$1,340.00 at Cooperativa Central in 1985 and the W-2 for 1986 indicated that the applicant had 1986 earnings at Cooperativa Central of \$1,580.00.

The differences in the signatures on the applicant's documentation and the exemplars in possession of the Service are minimal and are not sufficient to deny the applicant's claimed employment. Further, the applicant's claim is corroborated by the Form W-2 statements indicating that the applicant worked as claimed. Such documents have not been deemed incredible. The notice of intent to deny found problems with the W-2's because the applicant had stated she never used a Social Security Number. As a result, the Service Center concluded the W-2's weren't credible evidence. However, the W-2's do not contain any Social Security Number for the applicant.

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 performed the requisite qualifying agricultural employment during the twelve-month statutory period ending May 1, 1986.

There are no known grounds of ineligibility, and it appears the application should be approved.

ORDER: The appeal is sustained.