

PUBLIC COPY

U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

ADMINISTRATIVE APPEALS OFFICE

425 Eye Street N.W.

BCIS, AAO, 20 Mass, 3/F

Washington, D.C. 20536



FILE:



OFFICE: California Service Center

DATE:

JUL 17 2003

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:

Attached is the decision rendered on your appeal. 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, the Service Center will contact you. 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 Director, Western Service Center, and is now before the Administrative Appeals Office (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 decision was based on adverse information acquired by the Service relating to the applicant's claim of employment for Darrell Garrett at Garrett Farms.

On appeal, the applicant took issue with the Bureau's denial of his application, and indicated that he would submit additional documentation in support of his claim. He requested a copy of his legalization file in order to assist him in preparing a response to the Bureau's denial of his application. On December 11, 2002, the Bureau complied with the applicant's request on appeal for a copy of the entire record of proceedings.

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 performed 127 man-days of qualifying agricultural employment for [REDACTED] at Garrett Farms in Santa Cruz County, California, from May 1985 to November 1985. In support of the claim, the applicant submitted a corresponding Form I-705 affidavit along with a separate employment affidavit, both of which are signed by [REDACTED]. The applicant also provided a photocopied 1985 W-2 Wage and Tax Statement from [REDACTED].

Subsequent to filing his application, the applicant was interviewed by an officer of this Bureau. It is noted that, according to that legalization interviewer's worksheet, Form I-696, the officer indicated that fraud was suspected, and recommended denial of the application.

In attempting to verify the applicant's claimed employment, the Service acquired information which contradicted the applicant's claim. Specifically, the applicant's purported employer, [REDACTED] informed the Bureau that any letters which display the strawberry logo -- as does the applicant's letter -- are to be considered fraudulent. In addition, the signatures on the applicant's supporting documents did not match authentic exemplars of Mr. [REDACTED] signature obtained by the Service. Finally, the

applicant was informed that he had failed to provide a fully and properly completed Medical Examination of Aliens Seeking Adjustment of Status, Form I-693.

On December 9, 1991, the applicant was advised in writing of the adverse information obtained by the Service and of the inadequacies in his documentation, and of the Service's intent to deny the application. The applicant was granted thirty days to respond. The record contains no response from the applicant to the Service's notice. The director concluded the applicant had not overcome the derogatory evidence, and on January 22, 1992, denied the application.

On appeal, the applicant did not reiterate that he had worked for Mr. [REDACTED]. Subsequent to his appeal, the applicant submitted a Form I-705 and separate employment affidavit from farm labor contractor [REDACTED] indicating that, during the period from May 1, 1985 to May 1, 1986, the applicant also performed a total of 96 man-days of qualifying agricultural employment at Joe Smith & Sons farm in Patterson, California.

An applicant raises serious questions of credibility when asserting an entirely new claim to eligibility which was not initially put forth on the application. In such instances, the Service may require credible evidence to support the new claim as well as a complete plausible explanation concerning the applicant's failure to advance this claim initially. The instructions to the application do not encourage an applicant to limit his claim; rather, they encourage him to list multiple claims as they instruct him/her to show the most recent employment first.

The applicant's claim to have been employed by [REDACTED] Segouiano was first brought to the Service's attention at the appellate level. At the time of filing, the applicant did not reference this employment on the Form I-700 application; nor did the applicant submit corroborating materials to document the alleged employment for Mr. [REDACTED]. However, the very purpose of the Form I-700 application is to allow the applicant to claim the qualifying agricultural employment which entitles him to the benefits of status as a special agricultural worker. The applicant, on appeal, failed to explain why this entirely new claim to eligibility was not advanced at the initiation of the application process.

Larger issues of credibility arise when an applicant claims employment which is called into question through a Service investigation, and later attempts to establish eligibility with a different employer, heretofore never mentioned to the Service. The applicant's advancement of a new employment claim does not address, resolve, or diminish the credibility issues raised by the adverse evidence as regards the applicant's initial claim. Therefore, the applicant's overall credibility remains in question. For this reason, the applicant's new claim of employment for [REDACTED] will not serve to fulfill the qualification requirements necessary for status as a special agricultural worker.

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.).

The applicant has not overcome the derogatory information obtained by the Bureau regarding his claim to have performed qualifying agricultural employment for [REDACTED] at Garrett Farms. The negative finding of the interviewing officer regarding the applicant's overall credibility should also be taken into consideration. Accordingly, the documentary evidence submitted by the applicant cannot be considered as having any probative value or evidentiary weight. In addition, the applicant has failed to submit a fully and properly completed Medical Examination of Aliens Seeking Adjustment of Status, Form I-693, as requested by the director.

The applicant has, therefore, 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.

2005 2 20