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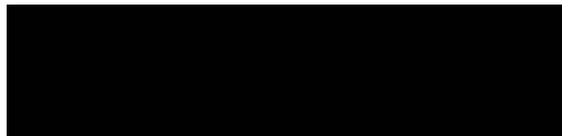
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
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Services

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: JUN 24 2008
XLA-885-311-179

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:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Application for Temporary Resident Status as a Special Agricultural Worker was denied by the Director, Western Service Center, on August 2, 1991. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because he found that the applicant had failed to submit evidence sufficient to overcome the grounds for denial expressed in the Notice of Intent to Deny (NOID). The NOID questioned the credibility of the documentation provided by the applicant in an attempt to meet his burden of proving 90 man-days of qualifying seasonal agricultural employment by a preponderance of the evidence.

On appeal, the applicant asserts that he has proof that he lived and worked in Corona, California. The applicant states that he was employed with [REDACTED] and [REDACTED].

In order to be eligible for the Special Agricultural Worker (SAW) program, an applicant 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 Immigration and Nationality Act (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).

The “preponderance of the evidence” standard requires that the evidence demonstrate that the applicant's claim is “probably true,” where the determination of “truth” is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that “[t]ruth is to be determined not by the quantity of evidence alone but by its quality.” *Id.* at 80. Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is “probably true” or “more likely than not,” the applicant or petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421, 431 (1987) (defining “more likely than not” as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he engaged in qualifying agricultural employment for at least 90 man-days during the twelve-month period ending May 1, 1986.

The applicant filed with the Immigration and Naturalization Service (the Service) a Form I-700, Application for Temporary Resident Status as a Special Agricultural Worker, signed by him on May 13, 1988. At part #22 of the application where applicants are asked to list all fieldwork in perishable commodities from May 1, 1983 through May 1, 1986, the applicant showed his employment with [REDACTED] as a lemon picker from December 1985 until March 1986 for a period of 94 days. The applicant listed the farm name and location as San Gabriel Valley, San Bernardino, California.

The applicant submitted a Form I-705, Affidavit Confirming Seasonal Agricultural Employment, from [REDACTED]. The Form I-705 affidavit shows the applicant's employment with [REDACTED] at the San Gabriel Valley Farm from May 1985 until May 1986 for 94 days, as a lemon picker. This information is inconsistent with the applicant's Form I-700 application, which provides that he was employed with [REDACTED] from December 1985 until March 1986. However, since the dates of employment listed on the affidavit correspond with the dates of the requisite period, this discrepancy may merely indicate [REDACTED] failed to specify the exact dates of the applicant's employment. Lastly, the applicant submitted a fill-in-the-blank form affidavit from [REDACTED]. The affidavit states that the applicant worked from December 1985 until March 1986 for a total of 94 days at the San Gabriel Valley Farm.

The record includes a letter to the Service from [REDACTED], General Manager-Secretary of AG Employers, Inc., formerly known as San Gabriel Valley Labor Association. The letter, dated March 26, 1990, states that [REDACTED] was employed as a Forklift Driver from January 1985 until March 1986. The letter further provides:

During the term of I.R.C.A. (Nov. 6, 1986 thru Nov. 30, 1988) ALL verification letters and 705's had payroll records attached and 95% were signed by me, only about 5% or less were signed by [REDACTED] or [REDACTED]. We as AG EMPLOYERS, INC. are the only entity that have [sic] custody of all payroll records; I as General Manager, am the only person authorized to release, sign or delegate when it come [sic] to payroll records. Besides the persons above named ([REDACTED] and [REDACTED]) I NEVER GAVE AUTHORIZATION to any foreman or supervisor to sign a 705 or a letter on behalf of any of the corporations named on [REDACTED]'s work record.

This information is inconsistent with the applicant's documentation. The applicant's Form I-700 application shows that he was employed under [REDACTED] at the San Gabriel Valley Farm from December 1985 until March 1986. Similarly, the affidavit from [REDACTED] states that the applicant worked for him at the San Gabriel Valley Farm from December 1985 until March 1986. However, [REDACTED]'s letter states that [REDACTED] was employed as a Forklift Driver from January 1985 until March 1986. Therefore, it is improbable that the applicant could have been employed or supervised by [REDACTED] during his period of qualifying agricultural employment.

In denying the application, the director found that applicant had failed to submit evidence sufficient to overcome the grounds for denial expressed in the NOID. The NOID, dated May 6, 1991, questioned the credibility of the documentation provided by the applicant in an attempt to meet his burden of proving 90 man-days of qualifying seasonal agricultural employment by a preponderance of the evidence. Specifically, the director stated that the Service contacted San Gabriel Valley Labor Association, now known as AG Employers. The director found that AG Employers informed the Service that [REDACTED] had worked strictly as a forklift driver and that the period of his employment as a field foreman was from April 12, 1986 to July 3, 1988, which is a direct contradiction of the information given by [REDACTED]. The director noted that AG Employers stated [REDACTED] was never given the authority to sign employment verifications on their behalf nor was he given access to payroll records. The director further noted that as of the date of the NOID, Mr. [REDACTED] has attested to 90 man-days of agricultural employment for over 1,500 applicants based solely on his memory.

On appeal, the applicant asserts that he has proof that he lived and worked in Corona, California. The applicant states that he was employed with [REDACTED] and [REDACTED].

Subsequent to filing his appeal, the applicant submitted a letter to the AAO stating that he has moved from California to Indiana and he does not know the basis for the denial of his application. The letter requests that the Service provide him with any adverse information used in the decision to deny. In addition, the letter requests the opportunity to provide an answer to such information.

On April 30, 2008, the AAO provided the applicant with copies of the director's NOID and the Notice of Decision. The AAO afforded the applicant an additional 30 days to submit a brief and/or additional evidence in support of his appeal. In response, the applicant asserts that he was not residing at his address on the date that the denial notice was originally mailed to him. The applicant furnishes copies of the following documentation:

- A receipt from a Kmart store located in Corona, California, dated September 16, 1981;
- A document written in Spanish regarding the United Agricultural Employee Welfare Benefit Plan & Trust;
- A receipt from the Electronica y Discoteca Mexico store, dated May 13, 1984;
- A receipt from Greyhound Lines, dated September 17, 1988;
- A blurred picture of an unidentified person;
- A statement handwritten in Spanish;

- A document bearing stamps from the Olive Heights Citrus Association and the Orange Heights Orange Association, located in Corona, California. The document has a handwritten notation, 1981-1984 [REDACTED];
- A notarized statement with faded typeface, making the document illegible;
- A certified mail return receipt, dated 1987, showing the applicant's name as the addressee;
- A statement of earnings and deductions from the Royal Citrus Company, showing the applicant's employment with this company in May 1988;
- A statement of earnings and deductions from AG Employers, Inc. The statement does not show the applicant's name nor does it show the period of employment for which it was issued. The statement has an issue date of "3/06" with the remainder of the date cut off;
- A handwritten statement of earnings and deductions from AG Employers, Inc. issued to the applicant on an unknown date;
- The applicant's California Identification Card, issued May 3, 1988;
- The applicant's California Identification Card with an issue date that is not completely legible. The card shows an issue date of "10-01-8" with a tear at the location of the year;
- The applicant's employee identification card from AG Employers, Inc. showing that he was hired on February 23, 1988;

A Greyhound Lines, Inc. passenger receipt, dated September 18, 1988;

- A handwritten receipt from Discotecas "[REDACTED]" located in Chicago Illinois, dated December 23, 1986;
- A handwritten receipt from Boulevard Pharmacy issued to the applicant, located in Corona, California, with an unknown issue date. The receipt shows an issue date of "July 15, 198" with the remainder of the year cut off;
- A receipt from Amtrack showing travel from Los Angeles to Chicago with a departure date of July 12, 1985;
- A note handwritten in Spanish, dated May 24, 1986; and
- A letter from [REDACTED], Office Secretary, Harvey Brothers Farms, Inc., dated March 13, 1989. This letter provides, "Mr. [REDACTED] was employed as our crewleader during the season

of 1985 – 1986.” However, the applicant has not listed on his Form I-700 application Harvey Brothers Farms as his place of employment nor has he listed [REDACTED] as his employer.

The applicant has submitted three documents written in Spanish without a corresponding English translation. Pursuant to 8 C.F.R. § 103.2(b)(3), any document containing foreign language submitted to Citizenship and Immigration Services shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator’s certification that he or she is competent to translate from the foreign language into English. Since the applicant has failed to comply with this regulation, these documents will not be given any weight in this proceeding.

It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The applicant has not provided any explanation of the apparent inconsistencies identified by the director, and he has failed to submit any relevant objective evidence to overcome these inconsistencies. None of the documents submitted by the applicant relate to his purported employment with [REDACTED] as a lemon picker from December 1985 until March 1986 at the San Gabriel Valley Farm in San Bernardino, California.

In summary, in his attempt to establish that he worked at least 90 man-days of qualifying employment in the United States during the requisite period, the applicant submitted a Form I-700, a Form I-705 and an affidavit that are inconsistent with the letter from [REDACTED] General Manager-Secretary of AG Employers, Inc. The applicant’s evidence submitted on appeal fails to reconcile these inconsistencies. Considering these inconsistencies, the documents submitted by the applicant are found to be insufficient to establish by a preponderance of the evidence that he worked at least 90 man-days of qualifying employment in the United States during the requisite period under both 8 C.F.R. § 210.3(b)(1) and *Matter of E-M*, *supra*. The applicant is, therefore, ineligible for temporary resident status under section 210 of the Act on this basis.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.