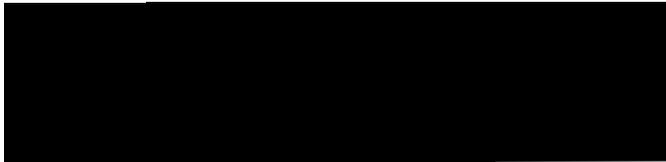


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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: MAY 01 2008  
XEM-88-143-05181

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. The file has been returned to the office that originally decided 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, Chief  
Administrative Appeals Office

**DISCUSSION:** The application for Temporary Status as a Special Agricultural Worker was denied by the Director, Western Service Center. The applicant appealed the decision to the Administrative Appeals Office (AAO). The decision is now before the AAO on appeal. The appeal will be dismissed.

The director denied the application because he found that the applicant had failed to meet his burden of establishing eligibility for temporary resident status. Specifically, the applicant failed to provide a credible statement or affidavit to overcome the adverse information in the Notice of Intent to Deny (NOID). The NOID indicated that the applicant had failed to establish that he engaged in seasonal agricultural employment, and director found that it could not be reasonably inferred that the applicant worked the number of man-days claimed in his application. The NOID stated that the applicant claimed employment with Cooperativa Central, and supported his claim with a document signed by [REDACTED], a former sharecropper for Cooperativa Central. The NOID indicated that the Immigration and Naturalization Service (INS), currently Citizenship and Immigration Services (CIS), had obtained exemplars of Nicolas Sandoval's signature. The director indicated that the signature on the document provided by the applicant appeared not to match the exemplar of [REDACTED]'s signature.

On appeal, the applicant stated that he believes he has submitted enough evidence to prove that he worked for Cooperativa Central as a member of [REDACTED]'s crew. The applicant stated that the director's allegations were based on comparison of signatures. The applicant also indicated that he had submitted signed affidavits from individuals who have personal knowledge that the applicant worked for [REDACTED], and that these individuals are willing and ready to testify on the applicant's behalf. The applicant asked that the decision be reconsidered.

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 submitted a Form I-700 Application for Temporary Resident Status as a Special Agricultural Worker on April 29, 1988. At part #22 where applicants were asked to list all fieldwork in perishable commodities from May 1, 1983 through May 1, 1986, the applicant listed only two periods of employment with Cooperativa Central, harvesting and hoeing strawberries from March 27, 1985 to October 21, 1985 for 116 days; and from April 15, 1986 to October 12, 1986. The number of days worked in the latter employment period was not listed.

The applicant provided a Form I-705 signed by an individual identified as [REDACTED].<sup>1</sup> The Form I-705 lists the applicant's employment by [REDACTED] for "Coop. Central" harvesting and hoeing strawberries for the following two periods: 116 man-days from March 27, 1985 to October 21, 1985; and 119 man-days from April 15, 1986 to October 12, 1986.

It is noted that the information provided in the Form I-705 does not clearly state that the applicant engaged in qualifying agricultural employment for at least 90 man-days during the twelve month period ending May 1, 1986. The twelve months of the requisite period extend from May 2, 1985 to May 1, 1986. The Form I-705 merely indicates that the applicant worked 116 man-days between March 27, 1985 and October 21, 1985; and 119 man-days between April 15, 1986 and October 12, 1986. The Form I-705 merely confirms that the applicant worked at least 81 man-days during the requisite period, yet fails to specifically confirm that the applicant worked 90 man-days during the requisite period.

The applicant also provided a notarized declaration from [REDACTED] which states that the applicant's periods of employment with [REDACTED] company are as follows: March 27, 1985 to October 21, 1985; and April 15, 1986 to October 12, 1986. This declaration merely indicates that that the applicant worked for Cooperativa Central during the above listed dates, yet fails to specifically state that the applicant worked 90 man-days during the requisite period.

The applicant also provided a form affidavit from [REDACTED] dated April 15, 1988, which states that the affiant has personal knowledge that the applicant resided in Los Angeles, California from March 1980 to present. This affidavit fails to state that the applicant engaged in qualifying agricultural employment during the requisite period.

Lastly, the applicant provided an affidavit from S [REDACTED] dated October 24, 1991. The affidavit states that, to the affiant's personal knowledge, the applicant has resided in the United States as follows: Salinas, California from March 1985 to November 1986; and Riverside, California from December 1986 to present. The affiant also stated that he and the applicant worked harvesting strawberries in Mr. Sandoval's field crew. This affidavit fails to state that the applicant engaged in qualifying agricultural employment during the requisite period.

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<sup>1</sup> It is noted that the applicant submitted a Form I-765 Application for Employment Authorization to CIS on August 24, 2006. At part #2 where applicants were asked to list other names used, the applicant listed Nicolas Sandoval.

In denying the application, the director found that the applicant had failed to meet his burden of establishing eligibility for temporary resident status. Specifically, the applicant failed to provide a credible statement or affidavit to overcome the adverse information in the Notice of Intent to Deny (NOID). The NOID indicated that the applicant had failed to establish that he engaged in seasonal agricultural employment, and director found that it could not be reasonably inferred that the applicant worked the number of man-days claimed in his application. The NOID stated that the applicant claimed employment with Cooperativa Central, and supported his claim with a document signed by [REDACTED], a former sharecropper for Cooperativa Central. The NOID indicated that the INS, currently CIS, had obtained exemplars of [REDACTED]'s signature. The director indicated that the signature on the document provided by the applicant appeared not to match the exemplar of [REDACTED]'s signature.

It is noted that the record does not contain evidence of a professional signature analysis. Therefore, the director appears to have erred in basing the decision in part on his personal conclusion that the signature on the document does not match exemplars of [REDACTED]'s signature. The director's error is harmless because the AAO conducts a *de novo* review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.2(d)(6). The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

On appeal, the applicant stated that he believes he has submitted enough evidence to prove that he worked for Cooperativa Central as a member of [REDACTED]'s crew. The applicant stated that the director's allegations were based on comparison of signatures. The applicant also indicated that he had submitted signed affidavits from individuals who have personal knowledge that the applicant worked for [REDACTED] and that these individuals are willing and ready to testify on the applicant's behalf. The applicant asked that the decision be reconsidered.

On October 2, 1995, the AAO issued a request for additional information from the applicant. The AAO identified apparent inconsistencies in the record and asked the applicant to clarify these inconsistencies. The AAO indicated that the applicant had stated during the interview with an immigration officer that he first arrived in the United States on December 28, 1984. However, [REDACTED] stated in his affidavit that he has personal knowledge that the applicant has resided in the United States since March 1980. This statement conflicts with the applicant's statement in his interview. In addition, the applicant stated in the interview that he worked every day from March 1985 to September 1985 and 20 days in October 1985. It is noted that this amounts at the very least to a total of 154 days. However, the Form I-705 submitted by the applicant indicates that the applicant worked 116 man-days from March 27, 1985 through October 21, 1985. Therefore, the information provided by the applicant in his interview is inconsistent with the information listed on the Form I-705. It is noted that the account provided by the AAO of the applicant's statements during the interview is consistent with the documentation of the interview by the interviewing officer that is contained in the record.

The applicant's response to the request for additional information from the AAO attempted to explain the inconsistencies identified by the AAO. The applicant stated that when the interviewing officer asked him when he entered the United States, the applicant was not aware that the officer meant the first time that he entered. The applicant indicated that he answered that the last time he had entered was during 1984. The applicant stated in his written response that he came to Los Angeles briefly during 1980 and met [REDACTED], and had already known [REDACTED] brothers from Mexico. The applicant also indicated that the officer spoke Spanish with difficulty and the applicant was not allowed to have an interpreter. It is noted that the record contains no evidence that the applicant requested the assistance of an interpreter. The record also does not contain any evidence that the applicant waived his right to bring and use an interpreter. The explanation provided by the applicant is found to be insufficient to overcome the inconsistency between the statements of the applicant and the statements of [REDACTED]. Mr. [REDACTED] confirmed that the applicant resided in the United States from 1980 to 1988, when the affidavit was prepared. However, the applicant indicated in his most recent written statement that he visited the United States briefly in 1980 and then re-entered in 1984. This inconsistency casts doubt on [REDACTED] knowledge of the applicant's activities and, therefore, calls into question his ability to confirm the applicant's presence in the United States during the requisite period.

The applicant's response to the AAO also attempted to explain the apparent inconsistency between the applicant's statements in the interview and the information in the Form I-705. The applicant indicated that he had actually stated in the interview that he had worked 116 days during 1985. He indicated that he also mentioned during the interview that he had worked during the 1986 season for almost the same length of time. The applicant indicated that his response during the interview was not recorded properly or was misunderstood by the interviewer. He indicated that if he had been allowed to have an interpreter, the inconsistency would not have arisen. Again, it is noted that the record contains neither evidence that the applicant requested the assistance of an interpreter nor evidence that the applicant waived his right to bring and use an interpreter. The applicant's statements in his response to the AAO appear to be consistent with the statements on the Form I-705. However, as noted above, the Form I-705 merely confirms that the applicant worked at least 81 man-days during the requisite period, yet fails to specifically confirm that the applicant worked 90 man-days during the requisite period.

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 provided a Form I-705 that fails to specifically confirm that the applicant worked 90 man-days during the requisite period. He provided a notarized declaration from [REDACTED] that also fails to specifically confirm that the applicant worked 90 man-days during the requisite period. The applicant provided an affidavit from [REDACTED] that fails to state that the applicant engaged in qualifying agricultural employment during the requisite period. The applicant also provided an affidavit from Mr. [REDACTED] that fails to state that the applicant engaged in qualifying agricultural employment during the requisite period. Considering that none of the documents submitted by the applicant specifically state that the applicant worked at least 90 man-days of qualifying employment in the United States during the requisite period, the documents submitted by the applicant are found to be insufficient to establish by a preponderance of the evidence that the applicant 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.