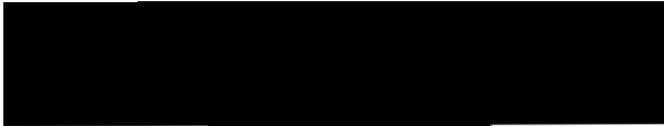




U.S. Citizenship
and Immigration
Services

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FILE:

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Office: CALIFORNIA SERVICE CENTER

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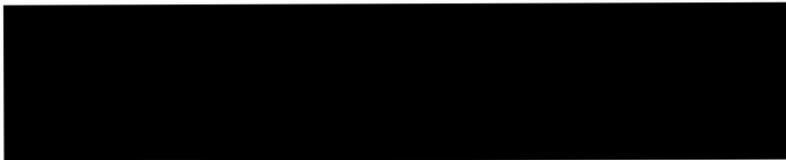
Applicant:



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:



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, on December 13, 1991. The applicant appealed the decision to the Administrative Appeals Office (AAO) on December 30, 1991. 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 admissibility and eligibility for temporary resident status. Specifically, the applicant failed to respond to the Notice of Intent to Deny (NOID) issued by the director.

On appeal, the applicant requested an extension of time to file a brief until 30 days after receiving a copy of his legalization file. He requested that he be sent copies of his complete immigration file. The applicant stated that he is eligible for temporary resident status, and that the denial of his application was erroneous. The applicant also stated that the specific reasons for his appeal would be submitted after he reviewed his file. The record indicates that the applicant's request for a copy of his file was fulfilled as of October 15, 1992. More than 15 years have passed since the applicant was provided with a copy of his immigration file, and the record indicates that he has failed to provide a brief or additional evidence in support of his appeal. Therefore, the record will be considered complete.

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 August 2, 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 work for [REDACTED] at [REDACTED] in Camarillo, California as a lettuce cutter for 99 days between November 1985 and March 1986. The applicant also listed employment that is not relevant to determining whether he meets the requirements for temporary resident status, including work as a laborer at a hotel and as a cook helper at a restaurant.

The applicant provided Form I-705 signed by an individual identified as [REDACTED]. The Form I-705 lists the applicant's employment by [REDACTED] for [REDACTED] for 99 days from November 2, 1985 to March 30, 1986 as a cutter and packer of lettuce. The applicant also provided a form declaration from an individual identified as [REDACTED] which states that [REDACTED] is the fully authorized custodian of records for the [REDACTED] and he has the authority to certify its records. The declarant stated that the applicant worked for [REDACTED] from November 2, 1985 to March 30, 1986 as a cutter and packer for lettuce.

The record includes an Information Digest that indicates that [REDACTED] has never worked for [REDACTED] and is not authorized to sign verifications for [REDACTED]. The Information Digest also states that 15 employment verification letters were provided to employees of [REDACTED] and these letters were signed only by [REDACTED]. This information casts serious doubt on the credibility of the documentation provided by the applicant in support of his application and, as a result, on his claim to have engaged in qualifying agricultural employment during the requisite period.

The director issued a NOID on October 17, 1991 explaining that a representative of [REDACTED] had provided a letter stating that [REDACTED] has never been employed by [REDACTED]. The NOID also stated that the Immigration and Naturalization Service, currently Citizenship and Immigration Services (CIS), telephoned [REDACTED], who stated that he has never signed any Forms I-705. As a result, the director found that the documents provided by the applicant were not credible. The applicant failed to timely respond to the NOID.

In denying the application, the director found that the applicant had failed to meet his burden of establishing admissibility and eligibility for temporary resident status. Specifically, the applicant failed to respond to the Notice of Intent to Deny (NOID) issued by the director.

On appeal, the applicant requested an extension of time to file a brief until 30 days after receiving a copy of his legalization file. He requested that he be sent copies of his complete immigration file. The applicant stated that he is eligible for temporary resident status, and that the denial of his application was erroneous. The applicant also stated that the specific reasons for his appeal would be submitted after he reviewed his file. As stated above, more than 15 years have passed since the applicant was provided with a copy of the applicant's immigration file, and the record indicates that he has failed to provide a brief or additional evidence in support of his appeal.

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 and letter that have been found not to be credible. When informed of the adverse information relating to the applicant's documents, the applicant failed to address the discrepancies or provide additional evidence to overcome them. Considering the serious doubt that has been cast on the credibility of the documents provided by the applicant, and considering that the applicant has failed to address the inconsistencies identified by the director, 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.