



U.S. Citizenship
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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **MAY 14 2008**
XID-88-142-02029

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 resident 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 respond to the adverse information presented in the Notice of Intent to Deny (NOID). The director found that the applicant had failed to establish his admissibility to the United States or his eligibility for temporary status as a special agricultural worker.

On appeal, the applicant requested an opportunity to submit an additional employment letter that he had been unable to secure prior to submitting his application. The applicant submitted the additional employment letter, together with a new Affidavit Confirming Seasonal Agricultural Employment (Form I-705).

In order to be eligible for temporary resident status as a special agricultural worker, 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 an Application for Temporary Resident Status as a Special Agricultural Worker (Form I-700) on March 26, 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

154 days of employment with [REDACTED] in Bakersfield, California from May 1985 to April 1986 as a laborer with grape crops.

The applicant also submitted a declaration signed by an individual identified as [REDACTED]. The declaration contains a header that appears to have been ink-stamped on the page and lists the name [REDACTED], a labor contractor number, and an address. The declaration states that the applicant was employed by the declarant during the grape harvest seasons of 1985 and 1986. The declaration confirmed that the applicant worked 156 days between May 1985 and April 1986. This information is inconsistent with the applicant's Form I-700, which indicates that the applicant worked for [REDACTED] for 154 days rather than for 156 days. This minor discrepancy casts some doubt on the declarant's ability to confirm the applicant's qualifying employment.

On December 27, 1989, the director issued a NOID to the applicant. The director stated that the Immigration and Naturalization Service, currently Citizenship and Immigration Services (CIS), received a letter on November 18, 1987 from the farm labor contractor [REDACTED] and conducted a telephone interview with [REDACTED] on October 21, 1988. [REDACTED] informed CIS that the employment verifications she issues are letters on original printed letterhead only, never on rubber stamped letterhead, with payroll history and/or Forms W-2. The director stated that the letter the applicant submitted does not have the same format as the letters issued by [REDACTED]. The director also stated that the signature on the letter submitted by the applicant does not match the exemplars issued to CIS by [REDACTED]. Based on this information, the director found that the documents submitted by the applicant could not be accepted as credible evidence of qualifying seasonal agricultural employment because the information obtained by CIS negates the inference drawn from the evidence. The director found that the evidence submitted did not establish that the applicant engaged in seasonal agricultural employment and that it could not be reasonably inferred that the applicant worked the number of man-days as claimed in his application.

The record contains a forensic analysis of the employment letter submitted by the applicant. In the analysis, the document analyst stated that it is his qualified opinion, after having examined photocopies of the known exemplars of [REDACTED]'s signature, that the letter submitted was very probably not signed by the same person who signed [REDACTED]'s name in the known example signatures. The results of this signature analysis cast serious doubt on the credibility of the employment letter provided by the applicant and, as a result, cast serious doubt on the applicant's claim to have engaged in qualifying agricultural employment during the requisite period.

The record also includes an Information Digest that states that [REDACTED] indicated to CIS that all her employment letters are issued on original printed letterheads only and are never on stamped or photocopied letterheads. As stated above, the employment letter submitted by the applicant was on stamped letterhead. This inconsistency casts additional doubt on the credibility of the employment letter and the applicant's claim to have engaged in qualifying agricultural employment.

In denying the application, the director noted that the applicant had failed to respond to the adverse information presented in the NOID. The director found that the applicant had failed to meet his burden of establishing his admissibility to the United States or his eligibility for temporary status as a special agricultural worker.

On appeal, the applicant requested an opportunity to submit an additional employment letter that he had been unable to secure prior to submitting his application. The applicant submitted the additional employment letter, together with a new Form I-705.

The applicant provided a Form I-705 signed by an individual identified as [REDACTED] together with a declaration from [REDACTED]. The Form I-705 stated the applicant worked for Mr. [REDACTED] at [REDACTED] for 105 man-days from November 5, 1985 to March 8, 1986 pruning, thinning and leafing grapes. The declaration stated that the applicant worked for [REDACTED] for 105 man-days from November 5, 1985 to March 8, 1986, pruning, thinning and leafing table grapes. It is noted that other information appears to have been eradicated and replaced so that the letter now indicates the applicant worked pruning, thinning and leafing. The change that was made was not initialed by [REDACTED]. This casts some doubt on the authenticity of the declaration. In addition, the employment with [REDACTED] was not listed on the Form I-700, although the form asked applicants to list all field work in perishable commodities. This casts additional doubt on the credibility of the Form I-705 and declaration from [REDACTED] as well as the applicant's claim to have performed the requisite employment.

The appeal and accompanying documentation failed to address the inconsistencies identified by the director in the NOID. The applicant merely submitted additional evidence of employment for another employer. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Here, the applicant has failed to provide additional evidence to address the questions raised by the director. Specifically, the applicant has provided no evidence to explain the fact that the signature on the letter submitted by the applicant is inconsistent with the genuine exemplars of [REDACTED]'s signature, and the letterhead on the letter submitted by the applicant does not conform to [REDACTED]'s descriptions of the genuine letters she issued. Therefore, the evidence provided by the applicant is found to be insufficient to establish that the applicant worked at least 90 man-days of qualifying employment in the United States 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 initially provided an employment letter that was found not to be credible. The applicant failed to address the inconsistencies raised by the director in relation to the employment letter he had submitted. Instead, the applicant submitted a Form I-705 and employment letter that attested to different employment by the applicant with a different employer. Considering the applicant's failure to address the serious doubts raised by the director with respect to the evidence initially provided by the applicant, 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.