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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE: [Redacted] Office: WESTERN SERVICE CENTER Date: FEB 06 2008
XCA-89-030-01033

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:
[Redacted]

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 May 11, 1992. 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 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 her burden of proving 90 man-days of qualifying seasonal agricultural employment by a preponderance of the evidence.

On appeal, the applicant asked for additional time to provide documentation in support of her application and for additional detail regarding the issues raised by the director.

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 signed on October 20, 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 employment with Jose Chavez thinning melons and lettuce from May 1, 1985 to October 5,

1985 for 125 days. Where applicants were asked to list the farm name and location, the applicant stated [REDACTED]

The applicant provided Form I-705 signed by an individual identified as [REDACTED] Foreman. The Form I-705 lists the applicant's employment by [REDACTED] at the [REDACTED] farm from May 1, 1985 to October 5, 1985 for 125 days, thinning melons and lettuce.

The applicant also provided a form affidavit from an individual identified as [REDACTED] Foreman. The affidavit states that the applicant worked from May 1, 1985 to May 1, 1986 for 125 days, thinning melons and lettuce. This affidavit appears to be inconsistent with the applicant's statements on her Form I-700 and her Form I-705, where she indicated she worked for [REDACTED] from May 1, 1985 to October 5, 1985 instead of from May 1, 1985 to May 1, 1986 as listed in the affidavit. 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 date the applicant finished work.

The record includes an Information Digest related to employer [REDACTED]. This information digest includes a letter addressed to the INS, dated June 29, 1988, and signed by [REDACTED]. This letter states, "Verification of employment required by the Amnesty Program for employees of [REDACTED] must be signed by one of the following: 1. [REDACTED] Owner; 2. [REDACTED] Attorney-in-Fact for [REDACTED]. This information is inconsistent with the documents provided by the applicant in support of her application. Specifically, the documents provided by the applicant were signed by an individual named [REDACTED] whose name did not appear on the list from [REDACTED]. The Information Digest also includes a letter from [REDACTED] to the INS dated July 18, 1988. In the letter, [REDACTED] stated that the wages paid by [REDACTED] were paid by check.

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 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 [REDACTED] provided the Immigration and Naturalization Service (INS), currently Citizenship and Immigration Services (CIS), with a list of foremen who worked for him during the requisite period. The name of [REDACTED] did not appear on the list.

On appeal, the applicant asked for additional time to provide documentation in support of her application and for additional detail regarding the issues raised by the director.

On November 29, 2007, the AAO provided the applicant with a copy of the Information Digest that was included in the record. In response, the applicant submitted a letter signed by herself and stating that she was paid weekly in cash for her work on [REDACTED] farms. This is inconsistent with the Information Digest, which includes a letter from [REDACTED] stating that his wages were paid by check. The applicant's letter stated that she recalled seeing a man named [REDACTED] at least twice a week, and that workers referred to this man as "El Patron." The applicant also stated that she had requested proof of employment and "was issued" proof of her work. The applicant provided no additional detail regarding the manner in which she obtained this proof.

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 she has failed to submit additional objective evidence to overcome these inconsistencies.

In summary, in her attempt to establish that she worked at least 90 man-days of qualifying employment in the United States during the requisite period, the applicant provided an attestation and a Form I-705 that are inconsistent with the Information Digest in the record. The applicant's statements submitted in response to the Information Digest failed to explain 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 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.