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U.S. Citizenship  
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FILE: [REDACTED]  
XID-89-002-02125

Office: CALIFORNIA SERVICE CENTER

Date: **MAY 28 2008**

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:



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.

A handwritten signature in black ink, appearing to be "R. P. Wiemann".

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, and 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 timely respond to the Notice of Intent to Deny (NOID) issued by the director. Specifically, the director found that the applicant had failed to establish that he engaged in seasonal agricultural employment and that it could not be reasonably inferred that he worked the number of man-days claimed in his application.

On appeal, the applicant requested an additional thirty days within which to file a brief in support of his appeal. He also requested that he be sent copies of his legalization file. He stated that he believes he is eligible for temporary resident status. The record indicates that the applicant was provided with copies of his legalization file on May 10, 1993. More than 15 years have passed since the applicant was provided with copies of his file. Therefore, the record will be considered complete.

In order to be eligible for the 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 record indicates that the applicant submitted a Form I-700 Application for Temporary Resident Status as a Special Agricultural Worker on November 30, 1988. At part #22 of the Form I-700 where applicants were asked to list fieldwork in perishable commodities from May 1, 1983 through May 1, 1986, the applicant listed only 129 days from June 1985 to February 1986 working for [REDACTED] at Superior Farm in Wasco, California harvesting grapes, pruning grapevines, and harvesting and pruning stone fruit. In support of his claim, the applicant submitted a Form I-705 Affidavit Confirming Seasonal Agricultural Employment, which listed 129 days of employment from June 1985 to February 1986 at Superior Farm, involving harvesting grapes, pruning grapevines, and harvesting and pruning stone fruit. The Form I-705 was signed by an individual identifying himself as [REDACTED], and a telephone number for [REDACTED] was provided.

The record includes a declaration dated April 27, 1988 from [REDACTED]. The declarant stated that the applicant worked for him from June 5, 1985 to February 28, 1986 harvesting stone fruit and grapes. The declarant listed his address as [REDACTED], Wasco, California. The declarant stated that he paid the applicant in cash.

In the NOID issued on May 30, 1991, the director stated that, in an effort to verify the applicant's employment, the Immigration and Naturalization Service (INS), currently Citizenship and Immigration Services (CIS), had telephoned the number for Superior Farms listed in the applicant's documents. INS determined that the number was actually for "Superior Farming." A former manager of Superior Farming submitted a letter indicating the dates that [REDACTED] was employed with Superior Farming. The dates indicated on the applicant's employment documentation fell outside the dates provided by the former manager. INS also telephoned the alleged owner of Superior Farms. This individual stated that there was never a business called "Superior Farms." The name was created by persons who used this individual's name and address to falsify employment verifications. As a result of this derogatory information, the director found that the applicant had failed to establish his eligibility for temporary resident status.

It is noted that CIS records show that a human resources manager for Superior Farming Company indicated that [REDACTED]'s final period of employment with Superior Farming Company ended on September 7, 1985. This is inconsistent with the applicant's documentation signed by [REDACTED], which confirms the applicant's employment through February 28, 1986. CIS records also indicate that the human resources manager stated that employees of Superior Farming Company were paid by check, and never by cash. This information also conflicts with the declaration from [REDACTED] that the applicant submitted, which states that the applicant was paid in cash. These inconsistencies cast serious doubt on the applicant's claim to have completed 90 man-days of qualifying employment during the requisite period.

In denying the application, the director found that the applicant had failed to establish that he engaged in seasonal agricultural employment and that it could not be reasonably inferred that he worked the number of man-days claimed in his application.

On appeal, the applicant requested an additional thirty days within which to file a brief in support of his appeal. He stated that he believes he is eligible for temporary resident status. The applicant's failure to respond directly to the derogatory evidence raised by the director casts additional doubt on the applicant's claim to have completed the employment requirements for temporary resident status.

In summary, the applicant has submitted an attestation and a Form I-705 signed by an individual who identified himself as [REDACTED], which states that the applicant worked 129 man-days of qualifying employment in the United States during the requisite period. However, considering the derogatory evidence obtained by CIS, and considering the applicant's failure to address this derogatory evidence, the documents provided 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.

It is noted that the record includes a case print for the Superior Court of California, County of San Bernardino. Case No. [REDACTED]. This document appears to indicate that the applicant was convicted of the following three misdemeanors on July 10, 2002: Driving Under the Influence of an Alcoholic Beverage or Drug, in violation of California Vehicle Code Section 23152(A); Driving Under the Influence with 0.08% or Higher Blood Alcohol, in violation of California Vehicle Code Section 23152(B); and Carrying a Concealed Weapon in a Vehicle in Violation of California Penal Code Section 12025A. According to 8 C.F.R. § 210.3(d)(3), an applicant who is convicted of three or more misdemeanors is ineligible for temporary resident status. Since the record indicates that the applicant was convicted of three misdemeanors he appears to also be ineligible for temporary resident status on this basis.

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