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

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[redacted]

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FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: JAN 17 2007

XOT-89-005-1018

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. All documents have 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 matter was remanded, and the application was reopened and denied by the Director, California Service Center. The appeal was dismissed by the Administrative Appeals Office (AAO). The matter will now be reopened by the AAO, and the appeal will be sustained.

Pursuant to 8 C.F.R. 103.5(b), the Administrative Appeals Office will *sua sponte* reopen or reconsider a decision under section 210 of the Act when it determines that manifest injustice would occur if the prior decision were permitted to stand. *Matter of O--*, 19 I&N Dec. 871. Because the applicant submitted relevant evidence that did not get entered into the record prior to the dismissal, this matter will be reopened.

Initially, the application was denied because the applicant was thought to have not filed a complete application within the time permitted. However, he had filed a complete application in a timely manner, and the matter was then remanded for full adjudication of his application. The application was then denied because the applicant presented documents relating to a claim of employment that he had not made initially.

On appeal, the applicant reiterates that he worked for both the individual he had initially claimed on his application and the one from whom he submitted employment documents.

In order to be eligible for temporary resident status as a special agricultural worker, an alien 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 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.* 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 (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.

On the Form I-700 application for temporary residence, the applicant claimed to have performed 90+ man-days of qualifying agricultural employment for [redacted] at [redacted] in Fresno, California from May 1985 to May 1986. However, when the applicant reported for the interview regarding his application he presented a From I-705 affidavit from [redacted] attesting to 100 days of employment at [redacted], also in Fresno County, from May 1, 1985 to May 1, 1986. He provided no evidence from [redacted]

The Director, California Service Center, issued a notice of intent to deny, finding that the applicant:

1. Had failed to explain at the interview why he changed his claim of employment;
2. Had failed to provide a notarized letter and pay records from [redacted]
3. Had provided a Form I-705 that incorrectly referred to [redacted] as a labor contractor and incorrectly stated that work records were not maintained by [redacted]

In response, the applicant submitted:

1. A notarized statement from [redacted] grower, indicating the applicant worked with him in 1987;
2. A letter from [redacted], stating the applicant worked for him in 1985-86, and indicating the director should contact him if he had any questions;
3. Another Form I-705 affidavit from [redacted] this one notarized, corresponding to the Form I-705 initially provided;
4. A letter from the applicant, explaining that he worked from May 1985 to May 1986 for [redacted] and that he changed the information regarding his claim because, although he remembered he had worked for [redacted] he later realized it was outside the qualifying 12-month period.

The Director, California Service Center then denied the application. The director noted that the evidence from [redacted] did not pertain to the requisite May 1, 1985 – May 1, 1986 period, and was not necessarily relevant to the claim to have worked for [redacted] The director also noted the applicant had not overcome the information about [redacted] having provided notarized letters, and copies of pay records, to bonafide applicants.

The applicant's appeal was then dismissed by the Acting Director, Administrative Appeals Office (AAO). The AAO pointed out that no response from the applicant had been received into the record regarding the second denial of his application. The AAO stated that no adequate explanation had been provided by the applicant concerning the change of his claim. Finally, the AAO found the revised claim, for [redacted], to lack credibility.

Prior to the dismissal of the appeal, the applicant had submitted the following, which was not entered into the record:

1. A notarized letter from [redacted] stating that the applicant did work for him for more than 90 days from May 1, 1985 to May 1, 1986, and again in 1987. [redacted] also stated that some of his workers call him [redacted]
2. A Form I-705 affidavit from [redacted] reiterating the same information;
3. A photocopy of [redacted]'s commercial driver's license;
4. Another Form I-705 affidavit from [redacted], corresponding to the first two;
5. A letter from International Immigration Express, urging [redacted] to finish completing the partially completed Form I-705 affidavit that was enclosed.
6. A letter from the applicant, in which he reiterates that he worked for both [redacted] and [redacted] and points out each affiant has made himself available for further contact.

Generally, the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility, and amenability to verification. 8 C.F.R. § 210.3(b)(1). Evidence submitted by an applicant will have its sufficiency judged according to its probative value and credibility. 8 C.F.R. § 210.3(b)(2). Personal testimony by an applicant which is not corroborated, in whole or in part, by other credible evidence (including testimony by persons other than the applicant) will not serve to meet an applicant's burden of proof. 8 C.F.R. § 210.3(b)(3).

There is no mandatory type of documentation required with respect to the applicant's burden of proof; however, the documentation must be credible. All documents submitted must have an appearance of reliability, i.e., if the documents appear to have been forged, or otherwise deceitfully created or obtained, the documents are not credible. *United Farm Workers (AFL-CIO) v. INS*, Civil No. S-87-1064-JFM (E.D. Cal.), June 15, 1989.

According to the Director , California Service Center, in a telephonic conversation with an officer of this service that took place on September 22, 1988, [redacted] provided Form I-705's, notarized letters, and copies of pay records to his workers who applied for temporary residence. However, a review of the information relied upon by the director reveals that [redacted] did not clearly indicate that each and every worker was provided with all three employment documents.

A determination must be made as to whether the applicant has demonstrated *by a preponderance of evidence* that he engaged in qualifying agricultural work to the degree required for special agricultural worker status. Over a period of 10 years, the applicant has submitted three affidavits and a letter from [redacted] attesting to the applicant's employment for him. Further, [redacted] urged the director to contact him if there were any questions regarding the applicant's employment. The director did not do so. Many applicants have made new claims of employment when confronted with adverse evidence regarding their initial claims. That is not the case here. While the director was correct to ask why the applicant had not claimed to have worked for [redacted] on his application, the applicant has provided an explanation and considerable documentation from [redacted]. It is noted that the applicant is not required to prove his qualifications under a "clear and convincing" standard, or a "beyond reasonable doubt" standard, but rather under the lower "preponderance of evidence" standard. It does appear probable that the applicant performed the requisite qualifying agricultural employment during the

twelve-month statutory period ending May 1, 1986 for [redacted] and, therefore, he meets the "preponderance of evidence" standard.

It is further noted that the applicant has also provided evidence relating to his originally-claimed employment for [redacted] His claim to have worked for two employers in the same area is consistent with the nature of agricultural work.

ORDER: The appeal is sustained. The director shall complete the adjudication of the application.