U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

FILE: [redacted] Office: LOS ANGELES Date: MAY 23 2008

XSM-88-565-03064

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 initially denied by the Director, Western Service Center, on August 30, 1992. The applicant filed a Form I-694 appeal and the Administrative Appeals Office (AAO) remanded the case on June 24, 1999. The application was denied by the Director, Los Angeles District Office, on April 13, 2007, and is now before the AAO on appeal. The appeal will be dismissed.

The director denied the application because she found that the applicant had failed to meet his burden of proving that he had completed 90 man-days of qualifying seasonal agricultural employment by a preponderance of the evidence. The director identified apparent inconsistencies between the applicant's statements during the interview with an immigration officer and his statements on the Form I-700 application.

On appeal, the applicant indicated that he believes he was not treated properly during his interview with the immigration officer, he was pressured by the officer to recall specific names and dates under extreme pressure without the benefit of consulting documents to avoid any contradictions, he will demonstrate that he worked for more than one employer during the requisite period, and he will provide additional written statements documenting his physical presence and employment during the requisite period.

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.

At part #22 of the Form I-700 application, where applicants were asked to list fieldwork in perishable commodities from May 1, 1983 through May 1, 1986, the applicant listed only 110 days from May 1985 to May 1986 working for [redacted] picking and harvesting strawberries in San Luis Obispo ("S.L.O.") California. In support of his claim, the applicant submitted a Form I-705 Affidavit Confirming Seasonal Agricultural Employment, in which he confirmed 110 days of employment from May 1, 1985 to May 1, 1986, involving harvesting and picking strawberries for [redacted] in San Luis Obispo. The Form I-705 was signed by an individual identifying himself as [redacted] The applicant did not provide evidence of any additional employment at the time he submitted his application.

The record includes a sworn statement dated October 4, 1992 executed before a United States immigration officer at Los Angeles International Airport. In this statement, the applicant indicated that he first entered the United States in April 1985. The applicant stated that his first job in the United States was picking strawberries in King City, California from 1985 to 1986 for approximately 100 days. This information appears to be inconsistent with the applicant's Form I-700, where he only listed employment in San Luis Obispo, California during the requisite period. It is noted that San Luis Obispo and King City, California are approximately 79 miles apart. This inconsistency calls into question whether the applicant actually completed at least 90 man-days of qualifying employment during the requisite period.

In his decision of August 30, 1992, the director of the Western Service Center raised concerns regarding the credibility of the Form I-705 submitted by the applicant and referred to derogatory evidence that existed in the form of an exemplar of [redacted]s signature. In remanding the case, the AAO explained that the exemplar was not incorporated into the record and, therefore, the evidence in the record was insufficient to support the director's finding.

In his interview with an immigration officer at the Los Angeles District Office on August 2, 2006, the applicant stated that he worked for [redacted] from May 1985 through April 1986 in Grove City, picking strawberries. This information also appears to be inconsistent with the applicant's Form I-700, where he only listed employment in San Luis Obispo, California for Mr. [redacted] during the requisite period. A search of http://maps.google.com does not reveal the existence of a Grove City, California, but does list the location of a Grove, California. It is noted that Grove, California is approximately 387 miles from San Luis Obispo, California. This inconsistency calls into question whether the applicant actually completed at least 90 man-days of qualifying employment during the requisite period.

In her decision of April 13, 2007, the director of the Los Angeles District Office denied the application because she found that the applicant had failed to meet his burden of proving that he had

completed 90 man-days of qualifying seasonal agricultural employment by a preponderance of the evidence. The director identified apparent inconsistencies between the applicant's statements during the interview with an immigration officer and his statements on the Form I-700 application. Specifically, the director indicated that the applicant's statements in his interview with an immigration officer on August 2, 2006 conflicted with his Form I-700, Form I-705 and I-694 appeal.

On the current appeal, the applicant provided two additional attestations in support of his application. The declaration from [redacted] states that the declarant has known the applicant since 1985 and that, at that time, the applicant worked in "the fields." The declarant does not recall the exact place and employer, but he knows the applicant worked in the fields for many years throughout the 1980s. This declaration does not specifically confirm the applicant worked at least 90 man-days of qualifying employment in the United States during the requisite period.

The declaration from [redacted] states that the declarant has known the applicant since 1984 and that, at that time, the applicant worked in "the fields." This declaration also fails to specifically confirm the applicant worked at least 90 man-days of qualifying employment in the United States during the requisite period. It is noted that even if this declarant intended to convey that the applicant engaged in agricultural employment in the United States in 1984, this declaration would be inconsistent with the applicant's sworn statement that indicated he first entered the United States in 1985.

In summary, the applicant has not provided any contemporaneous evidence of qualifying employment during the requisite period. He has submitted two attestations that fail to confirm the applicant worked at least 90 man-days of qualifying employment in the United States during the requisite period. The applicant submitted a Form I-705 signed by an individual who identified himself as [redacted] which states that the applicant worked at least 90 man-days of qualifying employment in the United States during the requisite period. However, considering the inconsistencies between the applicant's statements on his Form I-700 and his sworn statement from 1992; and between his statements on his Form I-700 and his statements in his interview in 2006, the Form I-705 is 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.

According to 8 C.F.R. § 292.4(a), an appearance shall be filed on the appropriate form by the attorney or representative appearing in each case. A notice of appearance entered in application proceedings must be signed by the applicant to authorize representation in order for the appearance to be recognized by CIS.

The record contains a Notice of Entry of Appearance as Attorney (Form G-28) signed by [redacted]. Since the Form G-28 is not signed by the applicant as required by 8 C.F.R. § 292.4(a), [redacted]'s appearance will not be recognized.

In addition, the applicant requested that copies of correspondence be provided to [redacted] The record does not contain a Form G-28 listing [redacted]z' name and including the applicant's signature. USCIS has an obligation to ensure that only those attorneys and representatives who are eligible to practice before the agency are recognized in that manner.

The documents presented do not establish [redacted]' eligibility to appear either as an attorney or as an accredited representative of an organization recognized and accredited by the Board of Immigration Appeals as defined in 8 C.F.R. §§ 103.2 and 292.1(a)(4). The documents list no location in which [redacted]s admitted to the practice of law, nor is he listed on the most recent Roster of Recognized Organizations and Accredited Representatives maintained by the Executive Office for Immigration Review. The procedures for accreditation of organizations and representatives are set forth in 8 C.F.R. § 292.2. Mr. Martinez failed to indicate that he is a law graduate representative pursuant to section 292.1(A)(2) of the Immigration and Nationality Act. According to the regulations at 8 C.F.R. § 292.1(a)(2)(iii), a law graduate may act as a representative if he has filed a statement that he is appearing under the supervision of a licensed attorney or accredited representative and that he is appearing without direct or indirect remuneration from the person that he represents. The record shows that [redacted]z has not filed such a statement. Nor has he provided evidence of his eligibility to represent the applicant on some other authorized basis listed in 8 C.F.R. § 292.1.

An attempt was made to contact on February 5, 2008 to request a Form G-28 signed by him and the applicant. More than three months have passed since the request was issued, and [redacted] has failed to provide a Form G-28 or other evidence of his eligibility to appear as an attorney or accredited representative. Therefore, the record will be considered complete. Since the record contains no evidence that [redacted]z is eligible to represent the applicant, his representation will not be recognized by the AAO.

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