

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

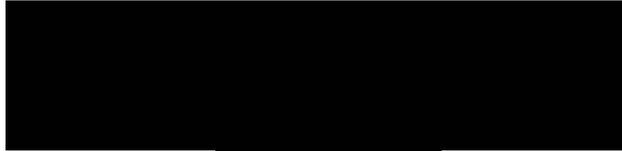
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY

L1



FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: OCT 20 2008  
XPR-88-246-02048

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.

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

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, and the decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application on September 4, 1991 because he found that the applicant had failed to prove by a preponderance of the evidence that he has worked the requisite number of man-days, is admissible to the United States under the provisions of section 210(c) of the Immigration and Nationality Act, 8 U.S.C. § 1160, and is otherwise eligible for adjustment of status under this section. Specifically, the director found that the applicant had failed to provide evidence sufficient to overcome the adverse information stated in the Notice of Intent to Deny (NOID).

On appeal, the applicant stated that the denial of his application was erroneous. Former counsel for the applicant stated that the director applied an incorrect standard of proof, and the director failed to provide the applicant with an opportunity to review and rebut adverse evidence.

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 applicant 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 on August 23, 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

employment with [REDACTED] at the [REDACTED] farm in Visalia, California from May 1985 to May 1986 for 90 days picking and pruning plums and grapes. At part #23 where applicants were asked to list all periods of residence in the United States since May 1, 1983, the applicant listed only the following address from May 1985 to May 1986: [REDACTED], Visalia, California.

The applicant submitted a Form I-705 Affidavit Confirming Seasonal Agricultural Employment listing an affiant identified as J [REDACTED]. At part B-10, the affiant identified himself as a farm labor contractor and friend of the applicant. At part C the affiant confirmed the following employment for the applicant at [REDACTED] in Tulare, California: 90 days from May 1, 1985 to September 25, 1985 thinning fruit including peaches, plums, nectarines, grapes, and table grapes and picking fruit including peaches, plums, nectarines, grapes, table grapes, oranges, lemons and olives; and 90 days from May 1, 1986 to September 25, 1986 picking fruit including peaches, plums, nectarines, grapes, table grapes, oranges, lemons and olives. At part C-15 the affiant indicated that he failed to submit supporting documents because the applicant was paid with cash.

The applicant provided multiple documents in support of his application that do not relate to his employment in the United States during the requisite period. He provided two declarations that relate somewhat to his claim to have worked in the United States during the requisite period. The record includes a notarized declaration from [REDACTED], which states that the declarant has known the applicant since March 1985. The declarant stated that the applicant rented from him from March 1985 to June 1985 and that they also lived together from June 1985 to November 1985. The declarant listed a series of addresses where he and the applicant lived together during the requisite period. All of these addresses conflict with the applicant's Form I-700, where he indicated that he resided at the [REDACTED] address during the requisite period. These inconsistencies cast doubt on the applicant's claim to have resided in the United States during the requisite period and, as a result, cast doubt on his claim to have performed the requisite man-days of employment during the requisite period.

The record also contains a declaration from Reverend [REDACTED] of Holy Family – St. Thomas Parish Communities. This declaration states that the applicant belonged to the Holy Family Parish from May 1985 to September 1986. The declaration also states that the applicant's address during that time was [REDACTED]. This information is inconsistent with the Form I-700, which indicates that the applicant resided at the [REDACTED] address during the requisite period. This inconsistency casts doubt on the applicant's claim to have resided in the United States during the requisite period and, as a result, casts doubt on his claim to have performed the requisite man-days of employment during the requisite period.

The director denied the application on September 4, 1991 because he found that the applicant had failed to prove by a preponderance of the evidence that he has worked the requisite number of man-days, is admissible to the United States under the provisions of section 210(c) of the Immigration and Nationality Act, 8 U.S.C. § 1160, and is otherwise eligible for adjustment of status under this section. Specifically, the director found that the applicant had failed to provide evidence sufficient to overcome the adverse information stated in the NOID. In the NOID, the director had explained that [REDACTED], the employer for whom the applicant claimed employment, stated that [REDACTED] was never employed by him as a farm labor contractor. Mr. [REDACTED] was employed by Mr. [REDACTED].

██████████ during 1985 and 1986 as a foreman but had no access to payroll records. The director also informed the applicant that all employees of Mr. ██████████ were paid by check. This information is inconsistent with the Form I-705 submitted on the applicant's behalf, which indicates that Mr. ██████████ was a farm labor contractor and that the applicant was paid in cash. These inconsistencies cast serious doubt on the applicant's claim to have worked the requisite number of man-days during the requisite period. The director also stated that the signature of Mr. ██████████ on the Form I-705 did not appear to match an exemplar provided by Mr. ██████████ ██████████

On appeal, the applicant stated that the denial of his application was erroneous. Former counsel for the applicant stated that the director applied an incorrect standard of proof, and the director failed to provide the applicant with an opportunity to review and rebut adverse evidence. The applicant also requested copies of his complete legalization file.

On February 25, 2000, the AAO determined that the applicant's Freedom of Information Act (FOIA) request had not been met and remanded the case so that the FOIA request could be fulfilled. On July 6, 2007, the applicant submitted a letter expressing his desire to withdraw the FOIA request and informing the AAO that he is no longer represented by counsel.

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 provided a Form I-705 and two declarations. The Form I-705 conflicts with the information provided to CIS by the applicant's alleged employer. Specifically, the employer indicated that all employees were paid by check, yet the Form I-705 states that the applicant was paid in cash. The employer indicated that Mr. ██████████, who allegedly signed the Form I-705, was a foreman. The Form I-705 indicates that Mr. ██████████ was a farm labor contractor. The applicant has failed to provide any evidence to explain and overcome these apparent inconsistencies. The applicant provided two attestations indicating that he resided in the United States during the requisite period. However, these attestations are inconsistent with the information that the applicant provided on Form I-700 and, therefore, are found not to be credible. The applicant has failed to provide any credible evidence in support of his claim to have worked the requisite number of man-days of qualifying employment. As a result of the limitations identified in the applicant's evidence, as well as the applicant's failure to overcome these limitations when given an opportunity to respond, the applicant is found not to have met his burden of establishing 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.