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U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: AUG 27 2009

XST-88-171-03050

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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Application for Temporary Resident Status as a Special Agricultural Worker was denied by the Director, California Service Center. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant filed a Form I-700, Application for Temporary Resident Status as a Special Agricultural Worker, under section 210 of the Immigration and Nationality Act, 8 U.S.C. § 1160, on May 15, 1988. On August 12, 1991, the Director, Western Service Center, denied the application. The director stated that the applicant's Form I-705, Affidavit Confirming Seasonal Agricultural Employment, from his employer, [redacted] is incomplete in that it does not list the name or phone number for the farm at which he worked. The director noted that per [redacted] statement to the Service (Immigration and Naturalization Service), he did not issue any employment verification documents that relate to an application for temporary resident status as Special Agricultural Worker. The director determined that [redacted] affidavit is considered unverifiable, and the documents submitted cannot be considered credible evidence. The director concluded that the applicant did not satisfy his burden of proof of having performed qualifying agricultural employment.

The applicant appealed the decision to the Legalization Appeals Unit (LAU) (now the Administrative Appeals Office). On March 23, 1999, the LAU remanded the applicant's case to the Western Service Center (now the California Service Center). The LAU determined that the memorandum of investigation currently in the record does not identify the Service employee who contacted nor does it contain sufficient information regarding [redacted] employees. The LAU noted that the record must contain a first-hand contemporaneous account by the Service employee who made the call in which s/he identifies himself or herself and provides very specific information. The LAU concluded that the derogatory evidence currently in the record is insufficient to support the director's finding in the applicant's case. The LAU indicated that if other significant adverse evidence exists or can be acquired, the director shall serve it on the applicant and accord him the opportunity to rebut it. The LAU instructed that a new decision must be rendered which, if adverse, may be appealed without fee.

The California Service Center has now forwarded the applicant's case to the AAO for a *de novo* review and determination of the merits of his application.[1] The AAO observes that the director failed to notify the applicant of any additional adverse evidence in regard to his employment for Mr. [redacted]. Accordingly, the AAO will withdraw the director's finding that the affidavit from Mr. [redacted] is unverifiable and incredible.

On appeal, counsel asserts that the applicant performed agricultural labor in the United States for at least 104 days between May 12, 1985 and September 24, 1985. Counsel states that the applicant was

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[1] The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB,* 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS,* 891 F.2d 997, 1002 n.9 (2d Cir. 1989).

employed by [redacted] and worked with cherries, apricots, peaches and grapes. As corroborating evidence, counsel furnished a declaration from the applicant detailing his agricultural employment. Counsel also furnished affidavits attesting to the applicant's agricultural employment from Farm Labor Contractor, [redacted], the applicant's son, [redacted], and the applicant's former colleague, [redacted].

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 record reflects that the applicant filed a Form I-700, Application for Temporary Resident Status as a Special Agricultural Worker, on May 15, 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] harvesting cherries, apricots, peaches and grapes from May 1985 to September 1985 for 104 days. The applicant left blank the part of the application where applicants were asked to list the farm name and location.

The applicant submitted a Form I-705, Affidavit Confirming Seasonal Agricultural Employment, from [redacted], Farm Labor Contractor. The affidavit shows that the applicant was employed by [redacted] from May 12, 1985 to September 24, 1985 for 104 days, harvesting

cherries, apricots, peaches and grapes. The applicant also submitted a form affidavit from Mr. dated April 5, 1988, which states that he is a Farm Labor Contractor and the applicant worked for his firm from May 12, 1985 to September 24, 1985. affidavit states that the applicant earned $2,010.04 during this period. Neither of these affidavits indicates the farm name(s) and corresponding location(s) of where the applicant was seasonally employed.

On appeal, the applicant furnished another affidavit from This additional affidavit from [redacted], dated January 30, 1993, provides that the applicant began his employment May 12, 1985 harvesting cherries for 26 days. It states that from June 12, 1985 to July 17, 1985, the applicant worked in apricots for 29 days, from July 18, 1985 to August 24, 1985, the applicant harvested peaches for 28 days, and from August 25, 1985 to September 24, 1985, the applicant helped pick grape crops for 21 days. [redacted]s affidavit notes that the applicant worked for a total of 104 days and earned a total of $2,010.04.

On June 4, 2009, the AAO issued a notice of intent to dismiss to the applicant informing him that during the adjudication of his appeal, it had been determined that he failed to completely address the basis for the director's denial. The director found that the Form I-705 affidavit from [redacted] is incomplete because it does not list the name and phone number for the farm where the applicant was employed. The AAO noted that the applicant's declaration and the affidavits from Luis [redacted], [redacted] and [redacted] fail to indicate the farm name and corresponding location of where the applicant was seasonally employed. The AAO noted further that the applicant left blank part #22 of his Form I-700 application where applicants are asked to list the farm name and location for each period of employment. The AAO afforded the applicant 33 days to provide the farm name, location, and phone number for each period of his employment during the requisite period.

On June 24, 2009, the AAO received a response from the applicant. The applicant furnished an additional affidavit from [redacted], dated June 18, 2009, which states that the applicant was employed from June 15, 1985 to July 18, 1985 for [redacted] located in Tracy, California, harvesting apricot crop and from July 20 to September 28 [year unrecorded] for [redacted] located in Escalon, California, harvesting peach crop. [redacted]s affidavit further notes that prior to these dates, the applicant was employed in peach thinning and grape suckering in various ranches located in San Joaquin, Stanislaus and Merced counties.

Upon a *de novo* review of the record, the AAO finds that the applicant has established that he is eligible for the benefit sought. As stated in *Matter of E-M-*, 20 I&N Dec. at 80, when something is to be established by a preponderance of the evidence, the proof submitted by the applicant has to establish only that the asserted claim is probably true. That decision also states that, under the preponderance of evidence standard, an application may be granted even though some doubt remains regarding the evidence. *Id.* at 79. The AAO finds that the applicant's evidentiary documentation, when viewed within the context of the totality of the evidence, is sufficient to meet his burden of proof in these proceedings.

Therefore, based upon the foregoing, the documents submitted by the applicant are found to be sufficient to establish by a preponderance of the evidence 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, eligible for temporary resident status under section 210 of the Act on this basis. The denial of temporary residence is withdrawn. The application for temporary resident status as a special agricultural worker is approved contingent upon required criminal and background checks.

ORDER: The appeal is sustained.