U. S. Department of Homeland Security
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: CHICAGO Date: AUG 27 2009

XST-89-059-02049

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, Chicago Field Office. 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 (Act), 8 U.S.C. § 1160, on January 10, 1989. On October 26, 1990, the Director, Western Service Center, denied the application because the applicant failed to appear for his scheduled interview. The applicant filed a notice to appeal the adverse decision. On February 25, 1992, the director withdrew the previous decision and reopened the proceedings for review.

On November 17, 2008, the applicant appeared for an interview at the Chicago Field Office to establish his eligibility for temporary residence under section 210 of the Act. During the interview the applicant was issued a Request for Evidence (RFE). The RFE requested the applicant to provide documentation to establish his unlawful presence in the United States from 1985 to present.

On February 25, 2009, the Chicago Field Office director denied the application. The director noted that the applicant submitted, in response to the RFE, documents under the name [redacted] for the year 1987. The director stated that the applicant failed to furnish documentation related to his residence from 1985 to the date of his application. The director noted that United States Citizenship and Immigration Services (USCIS) attempted to contact [redacted], the employer who completed the applicant's Form I-705, Affidavit Confirming Seasonal Agricultural Employment, and learned that he was not located at the residence of the listed telephone number. The director determined that for these reasons the applicant failed to establish by a preponderance of the evidence that he meets the requirements for status as a temporary resident.

The AAO observes that the director erroneously requested the applicant to provide documentation related to his unlawful presence in the United States from 1985 to present. Accordingly, the AAO will withdraw the part of the director's decision that relates to the applicant's failure to provide evidence of his continuous unlawful presence in the United States.

On appeal, counsel furnished documentation of the applicant's residence in the United States and an affidavit from [redacted]'s daughter, [redacted] The entire record was reviewed and considered in rendering a decision on the appeal.

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 January 10, 1989. 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 picking cherries and pears and cutting asparagus from May 1, 1985 to May 1, 1986 for 97 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 Farm Labor Contractor. The affidavit shows that the applicant was employed by from May 1, 1985 to May 1, 1986 for 94 days, picking cherries and pears and cutting asparagus. **At part** #11, where affiants were asked to list the farm name, county, state and phone number, listed the applicant's employment with "various" farms in S.J.C. County, California. failed to provide the names and telephone numbers of the "various" farms. The applicant also submitted with his application a form letter affidavit from dated March 24, 1988, which states that the applicant worked on his farm labor crew for various farms, picking cherries, pears and asparagus for a total of 97 days. In denying the application, the director noted that USCIS attempted to contact and learned that he is not located at the residence of the listed telephone number.

On appeal, the applicant furnished, in pertinent part, an affidavit from daughter, attesting to the applicant's employment with based upon the information contained in affidavit. affidavit states that her father is retired and lives in Mexico. The affidavit contains and respective

phone numbers and a copy of [redacted]'s California Driver License. However, Ms. [redacted] affidavit fails to indicate the farm name(s) and corresponding location(s) of where the applicant was seasonally employed.

On June 9, 2009, the AAO issued a notice of intent to dismiss to the applicant informing him that based upon the foregoing, he has failed 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. The AAO afforded the applicant 33 days to provide documentation of the farm name, location, and phone number for each period of his employment during the requisite period.

On July 13, 2009, the AAO received an affidavit from the applicant. The applicant states that he has learned from [redacted]'s daughter, [redacted], that her father is senile, seriously ill, and has no recollection as to the exact farm names and locations of where he was employed. He states that [redacted] has returned to the United States and is temporarily living with his daughter until he is placed in a nursing home. He states that according to his own memory of events in May 1985 he worked at a farm named The Islands in Field #2 located on Interstate Highway #5 in Tracy, California. He states that he was employed at the farm for about a month and a half (45 days) and picked asparagus. He states that he next worked at [redacted] located at [redacted], Suisun City, California. He states that he picked pears and cherries at the farm and reported to [redacted] an assistant manager. He states that he was employed at the farm for over two months to possibly three months or longer. He states that he also worked at the Gordon Valley Farm located at [redacted] Fairfield, California. He states that he picked grapes at the farm and remembers that he worked at the farm for two or three months during the years 1985 to 1986, but is unsure of the exact dates of his employment.

Upon a *de novo* review of the record, the AAO finds that the applicant has established that he is eligible for the benefit sought.[1] 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.

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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).

§ 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.