



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

LL



FILE: [REDACTED]  
XDE-88-165-04051

Office: NEBRASKA SERVICE CENTER

Date: **MAY 09 2008**

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. Wiemahn, Chief  
Administrative Appeals Office

**DISCUSSION:** The application for Temporary Status as a Special Agricultural Worker was denied by the Director, Northern Regional Processing Facility. The applicant appealed the decision to the Administrative Appeals Office (AAO). The decision is now before the AAO on appeal. The appeal will be dismissed.

The director denied the application because he found that the applicant had failed to respond to the adverse information provided to the applicant in a notice of adverse information. The director found that the documentation presented by the applicant had failed to establish through just and reasonable inference that she performed the requisite 90 days of agricultural employment during the 12-month period ending on May 1, 1986.

On appeal, the applicant stated that she had worked for the individual who identified himself as her employer. The applicant also provided an additional written statement from the employer.

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 applicant submitted a Form I-700 Application for Temporary Resident Status as a Special Agricultural Worker on May 3, 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] for 90 days from May 1985 to August 1985 and for 95 days from May 1986 to

September 1986. An additional period of work during 1984 appears to have been added in handwriting by an immigration officer at the applicant's request.

The applicant submitted a Form I-705 Affidavit Confirming Seasonal Agricultural Employment (Form I-705) signed by an individual who identified himself as [REDACTED]. The Form I-705 states that the applicant worked for [REDACTED] at [REDACTED] thinning, hoeing, and weeding sugar beets for 95 days from May 10, 1984 to August 15, 1984; and for 115 days from May 15, 1986 to "August-September" 1986. The form also states that the applicant worked for [REDACTED] at [REDACTED] thinning, hoeing, and weeding for 90 days from May 15, 1985 to August 15, 1985.

The applicant also submitted an affidavit dated March 10, 1988 from an individual who identified himself as [REDACTED]. This affidavit states that the applicant worked for [REDACTED] during May, June, July and parts of August during 1984, 1985, 1986 and 1987 doing farm labor in sugar beets. This included thinning, hoeing, and weeding. The specific dates of the applicant's employment with the affiant are listed as follows: May 10, 1984 to August 15, 1984; May 15, 1985 to August 15, 1985; May 15, 1986 to August 15, 1986; and May 15, 1987 to August 15, 1987.

The record indicates that the Director, Denver District Office issued a denial of the application on September 28, 1988. The decision stated that the application indicated that the applicant was employed by [REDACTED] from May 15, 1985 to August 15, 1985, yet [REDACTED] has no record of the applicant's employment. In addition, the decision stated that an affidavit provided by the applicant and signed by [REDACTED] indicated that [REDACTED] worked for [REDACTED] during the requisite period. However, records of the Immigration and Naturalization Service, currently Citizenship and Immigration Services (CIS), indicated that [REDACTED] was not employed by [REDACTED] Farms in 1985. As a result, the director found the affidavit to be fraudulent. The decision stated that the applicant had failed to prove that she performed the 90 days of qualifying agricultural employment in the requisite period and, therefore, that the application was denied.

The applicant submitted a Form I-694 Notice of Appeal on October 26, 1988. On appeal, the applicant stated that she had worked for [REDACTED]. The applicant also provided two affidavits dated October 3, 1988 from an individual who identified himself as [REDACTED]. The first affidavit stated that [REDACTED] employed the applicant from approximately April 1984 to September 1986. The applicant thinned, hoed and weeded beets. The affidavit includes photocopies of migrant and seasonal agricultural worker documents for [REDACTED] from 1986 and 1988. The second affidavit states that [REDACTED] "employed beets [sic] with these farmers in 1984, 1985 and 1986" and provided a list of several farmers, together with addresses and telephone numbers. The list includes [REDACTED] Farms but does not include [REDACTED]. The affiant also stated, "I also had indicated that I had started with [REDACTED] but I started with him in 1986 to the present." This statement is inconsistent with the Form I-705 signed by [REDACTED], which states that the applicant worked for [REDACTED] at [REDACTED] starting in May 1985. This inconsistency casts serious doubt on the applicant's claim to have worked the requisite number of man-days during the twelve-month period ending May 1, 1986.

On October 5, 1989, the Director, Northern Regional Processing Facility, issued a notice to the applicant stating that the applicant's Form I-700 application had been reviewed to ensure compliance with a court settlement related to a decision on April 21, 1989 in *United Farm Workers (AFL-CIO)*

v. *INS*, Civil No. S-87-1064-JFM (E.D. Cal.). The notice also explained adverse information that had been obtained by CIS, and provided the applicant with 30 days to respond. The director stated that the Form I-700 application indicates that the applicant worked at ██████████ for 90 man-days from May 1985 to August 1985; and the Form I-705 states that the applicant worked on ██████████ Farms from May 15, 1985 to August 15, 1985. However, the applicant also submitted an affidavit from ██████████, which fails to include ██████████ in the list of all farmers who employed Mr. ██████████. The director also stated that ██████████ was convicted in the United States District Court for the District of Colorado (Case Number 88-CR-335) of creating or supplying false writings of documents for use in making applications for Special Agricultural Worker status. The director stated that any documentation created by ██████████ is considered fictitious and fraudulent and lacking credibility or probative value. The director asked that the applicant provide her own statement signed before a notary public specifically stating whether the applicant did in fact work for ██████████ and, if so, providing the exact dates, the work performed, the work location, and other specific working conditions that could be verified by investigation. The record indicates that the applicant failed to respond to the October 5, 1989 notice from the director.

On April 24, 1990, the director denied the application because he found that the applicant had failed to respond to the adverse information presented in the notice issued on October 5, 1989. The director found that the documentation presented by the applicant had failed to establish through just and reasonable inference that she performed the requisite 90 days of agricultural employment during the requisite period.

In summary, in her attempt to establish that she 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 three affidavits. Each of these documents was signed by ██████████. The second affidavit from October 3, 1988 conflicts with ██████████'s statements on the Form I-705. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The director provided the applicant with multiple opportunities to respond to this inconsistency, as well as to other adverse information obtained by CIS regarding ██████████. This included information indicating that ██████████ had been convicted of crimes relating to the submission of fraudulent documents in support of applications for Special Agricultural Worker status. The applicant failed to provide an explanation and additional information from a third party to overcome this adverse information. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). As a result of the major inconsistency identified in the applicant's documents, as well as the additional adverse information regarding ██████████, the applicant is found not to have met her burden of establishing that she 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.