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[REDACTED]

FILE: [REDACTED]
XHA-89-012-2039

Office: HARLINGEN

Date: FEB 24 2009

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

The director denied the application for Group 1 status because the applicant failed to establish the performance of at least 90 man-days of qualifying agricultural employment during each of the twelve-month periods ending May 1, 1984, May 1, 1985 and May 1, 1986. The director also determined that the applicant failed to demonstrate the performance of at least 90 days of employment during the Group 2 twelve-month period ending May 1, 1986.

The applicant appealed the denial and requested a copy of his record of proceedings. The Legalization Appeals Unit (LAU) (now the Administrative Appeals Office or AAO) remanded the appeal for the purpose of processing this request and instructed that any brief or additional information that is submitted by the applicant subsequent to the processing of the request shall be considered by the director. The LAU further instructed that if the applicant has not overcome the denial, the record should be forwarded to the LAU for consideration.

The record reflects that on September 29, 1999, the Immigration and Naturalization Service (INS) provided counsel with a copy of the applicant's record. Counsel subsequently furnished an employment verification affidavit from Pedro Munoz, farm labor contractor, dated February 18, 2002. The director thereafter forwarded the record to the AAO for consideration. The director's decision is now before the AAO on 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.

On October 19, 1988, the applicant filed with the Immigration and Naturalization Service (INS) a Form I-700, Application for Temporary Resident Status as a Special Agricultural Worker. At part #22 of the application where applicants are asked to list all fieldwork in perishable commodities from May 1, 1983 through May 1, 1986, the applicant showed that he was employed with [REDACTED] at [REDACTED] farm located in Hidalgo, Texas as a tomato and onion picker. The applicant showed that he was employed from March 1985 to May 10, 1985 and from May 10, 1986 to July 1986 for a total period of 91 days.¹

The applicant concurrently filed a Form I-705, Affidavit Confirming Seasonal Agricultural Employment, from [REDACTED] farm labor contractor. The affidavit shows the applicant’s employment with [REDACTED] at the [REDACTED] farm from March 25, 1985 to May 10, 1985 as an onion clipper. The affidavit also shows the applicant’s employment with [REDACTED] farm in Hidalgo, Texas as a tomato picker from May 10, 1986 to July 1986. This information is inconsistent with the applicant’s Form I-700 application, which provides that he was only employed on the [REDACTED] farm. However, since the dates of employment are outside the requisite period, this inconsistency is not material.

The record reflects that the applicant was interviewed by a legalization officer in connection with his Form I-700 application on October 19, 1988. During the applicant’s interview, he testified that he was employed in agriculture for 10 days in May 1985 and 10 days in May 1986.

On January 9, 1989, the director issued a notice to deny the application to the applicant. The director found that a review of the Form I-700 application and Form I-705 affidavit reflect that the applicant worked a total of 91 man-days in perishable agricultural commodities from March 25, 1985 to July 1986. The director found that only 10 days the applicant worked during May 1985 falls within the qualifying period. The director determined that for this reason the applicant failed to establish that he worked the requisite number of days to qualify for temporary residence.

On appeal, the applicant furnished an affidavit from [REDACTED], farm labor contractor, dated February 18, 2002. [REDACTED] asserts in his affidavit that the applicant was employed

¹ The AAO notes that the applicant’s periods of employment from March 25, 1985 to May 10, 1985 and May 10, 1986 to July 1, 1986 constitutes a period of 98 days.

with him at various times. He states that he does not have any of his old employment records from the 1980s and can only rely on his memory. [REDACTED] indicates that the applicant worked in his work crews for a lengthy period of time. He contends that he remembers the applicant because the applicant was only 15 years old when he began his employment. [REDACTED] asserts that the information provided on the applicant's Form I-700 application only included his employment with [REDACTED] and not the work they were doing for other farmers. He indicates that he cannot state how many days the applicant was employed with him during the requisite period, but he would be surprised to learn that it was less than 90 days.

[REDACTED]'s assertions are vague and lack specific detail on the applicant's qualifying employment during the requisite period. For instance, [REDACTED] states that the applicant may have been employed with farmers other than [REDACTED]. However, he does not provide the names and locations of those farms. Nor does he indicate the dates of employment and the type of crop and field work the applicant would have been engaged in. Moreover, [REDACTED] fails to fully attest to his personal knowledge of the applicant's qualifying employment for at least 90 man-days during the twelve month period ending May 1, 1986. In his affidavit, he states, "I can not say exactly how many days during that year between May, 1985 and May, 1986, [REDACTED] worked for me but I would be very surprised to learn that it was less than 90 days."

[REDACTED]'s failure to provide concrete, specific and reliable information related to the applicant's qualifying employment during the requisite period renders his affidavit of little probative value. Therefore, [REDACTED]'s affidavit does not, alone, overcome the basis for the director's denial.

The applicant has not furnished any other corroborating evidence in support of his application. Upon a *de novo* review of the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that he is eligible for the benefit sought.

Therefore, based upon the foregoing, the documents submitted by the applicant are found to be insufficient 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, 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.