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JUN 03 2009

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date:  
XEC-88-143-01135

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. 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 termination of temporary resident status by the Director, Western Service Center, is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director terminated the applicant's temporary residence upon a determination that the applicant's adjustment to temporary resident status was the result of fraud. This determination was based on adverse information regarding the applicant's claim of employment for Farm Labor Contractor [REDACTED]. The applicant filed a notice to appeal the adverse decision and requested a copy of the record of proceedings. The applicant indicated that he would furnish additional documentation after receiving a copy of his record. The Legalization Appeals Unit (now the AAO) remanded the matter to the Western Service Center (now the California Service Center) for the purpose of processing the applicant's record request. On January 2, 2009, a copy of the applicant's record was mailed to him. As of the date of this decision, the applicant has not submitted a brief or any additional documentary evidence. The matter has now been forwarded to the AAO for a decision on the merits of the appeal.

On appeal, the applicant furnished an employer affidavit from [REDACTED] The entire record was reviewed and considered in rendering a decision on the appeal.

In order to be eligible for temporary resident status as a special agricultural worker, an alien 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 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 status of an alien lawfully admitted for temporary residence under section 210 of the Act may be terminated before the alien becomes eligible for adjustment to permanent resident status if it is determined by a preponderance of the evidence that the adjustment to temporary resident status was the result of fraud or willful misrepresentation as provided in section 212(a)(6)(i) of the Act.<sup>1</sup> 8 C.F.R. § 210.4(d).

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 April 5, 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 his employment with [REDACTED] thinning and weeding lettuce from September 1985 to March 1986 for 120 days. Where applicants were asked to list the farm name and location, the applicant listed [REDACTED] in Yuma AZ as his place of employment.

The applicant concurrently filed a Form I-705, Affidavit Confirming Seasonal Agricultural Employment, from Farm Labor Contractor [REDACTED]. The affidavit shows that the applicant was employed by [REDACTED] at Senini Farms in Yuma, Arizona from May 1, 1985 to May 1, 1986 for 120 days, thinning and weeding lettuce. This affidavit appears to be inconsistent with the applicant's statements on his Form I-700 where he indicated that he worked for [REDACTED] from September 1985 to March 1986. However, since the dates of employment listed on the affidavit correspond with the dates of the requisite period, this discrepancy may merely indicate [REDACTED] failed to specify the exact months of the applicant's employment within the requisite period.

The applicant furnished a letter issued on Senini Farming Company letterhead from Judy Larimore, Bookkeeper. [REDACTED] letter states that [REDACTED] was an employee from May 1, 1985 to May 1, 1986 on a seasonal basis.

The applicant was granted temporary residence on July 17, 1989. On November 21, 1990, the director issued a notice of intent to terminate to the applicant. The director asserted that Immigration and Naturalization Service (INS) records indicate that on June 6, 1990, [REDACTED] signed a sworn statement that all affidavits of employment and applications listing [REDACTED] as the employer were false, fictitious and fraudulent. The director noted that [REDACTED] provided a list of individuals who performed the requisite number of man-days during the qualifying period,

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<sup>1</sup> Section 212(a)(6)(C)(i) of the Act provides that any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible. 8 U.S.C. § 1182(a)(6)(C)(i).

and the applicant's name is not on this list. The director found that based upon this information, the documents the applicant submitted from [REDACTED] stating that he worked at the Senini Farms can no longer be considered credible evidence. The director determined that based upon this evidence the applicant failed to establish that he is eligible for temporary resident status under section 210 of the Act.

On June 10, 1991, the director issued a notice of termination to the applicant. The director noted that the applicant failed to respond to the notice of intent to terminate. The director determined that the applicant's documentary evidence does not establish that he engaged in seasonal agricultural services or worked the number of man-days he claimed on his application. The director concluded that the applicant failed to establish that he was eligible for temporary resident status on this basis, and terminated his temporary residence.

On appeal, the applicant furnished a form letter affidavit from [REDACTED] Mr. [REDACTED] states that the applicant was employed by him from May 1, 1985 to June 24, 1985 and March 22, 1986 to April 30, 1986, planting and cutting asparagus. He indicates that the applicant resided at [REDACTED]

[REDACTED] affidavit fails to provide specific and concrete information on the applicant's qualifying employment during the requisite period. For instance, [REDACTED] does not provide the name and location of the farm where he claims the applicant was employed. Nor does he provide his relationship to the applicant and title (i.e. grower, foreman or farm labor contractor). Furthermore, [REDACTED]'s statement that the applicant resided in Pasco, Washington is inconsistent with the applicant's Form I-700 application. The application reflects that during the applicant's interview he testified that he resided in San Luis, Arizona from September 1985 to March 1986 and Mexico from March 1986 to April 5, 1988. Finally, the applicant failed to provide his employment with [REDACTED] on his Form I-700. The applicant has not indicated the reason this employment information and affidavit was not initially provided with the application or subsequently included during his interview. For these reasons, the AAO finds that [REDACTED] affidavit is not credible and is of little evidentiary value.

It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The director terminated the applicant's temporary residence based on adverse information related to his claim of employment for [REDACTED]. The AAO finds that the applicant has not provided any explanation of the apparent inconsistencies identified by the director, and he has failed to submit additional objective evidence to overcome these inconsistencies.

Therefore, based upon the foregoing, the applicant 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 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*.