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FILE: [REDACTED]
XFR-88-099-00198

Office: CALIFORNIA SERVICE CENTER

Date: **JUN 03 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:

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.

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The application for Temporary Status as a Special Agricultural Worker was denied by the Director, Western Service Center. The decision is now before the AAO on appeal. The appeal will be dismissed.

The director denied the application because the applicant failed to establish the performance of at least 90 man-days of qualifying agricultural employment during the eligibility period ending May 1, 1986.

On appeal, the applicant asserts that his Form I-705 affidavit, testimony during his interview, and additional affidavits are sufficient proof of his qualifying employment. 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 February 17, 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] thinning and hoeing cantaloupes from May 1985 to August 1985 for 100 days. Where applicants were asked to list the farm name and location, the applicant listed Arquelian Co. in Blayth [sic], California.

The applicant submitted 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 the Arquelian Co. farm in Blythe, California from May 1, 1985 to May 1, 1986 for 100 days, thinning and hoeing melons. The affidavit indicates that the applicant was paid in cash for his employment. The record contains a copy of [REDACTED] Farm Labor Contractor Certificate of Registration, dated December 19, 1986.¹

In denying the application, the director found that applicant had failed to submit evidence sufficient to overcome the grounds for denial expressed in the Notice of Intent to Deny (NOID). The NOID questioned the credibility of the documentation provided by the applicant in an attempt to meet his burden of proving 90 man-days of qualifying seasonal agricultural employment by a preponderance of the evidence. Specifically, the director stated that [REDACTED] office manager for Arakelian Farms (Arquelian Co.), informed the Immigration and Naturalization Service (INS) that [REDACTED] [REDACTED] has never been employed by the company in any capacity. The director noted that Arakelian Farms pays all of its employees by check, not cash. The director determined that based on this information, the documentation the applicant submitted can no longer be considered credible evidence.

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).

On appeal, the applicant asserts that he was employed by [REDACTED] foreman, J.R. Norton Co. [REDACTED] as a farm laborer during the year ending May 1, 1986 for a period of over 90 days.² The applicant contends that he was working illegally and, therefore, was paid on a daily cash basis. The applicant states that he did not receive a W-2 Form or check stubs. The applicant asserts that many foremen are hired without foreman licenses and many agricultural employees are paid in cash. The applicant maintains that for this reason a complete paper trail does not exist to prove the 90 day employment of [REDACTED]. The applicant contends that the original statements on his Form I-705, in combination with statements he made during his legalization interview, and the additional declarations furnished on appeal, should be sufficient proof of his qualifying employment. The applicant states that he has met the burden of proof to overcome the adverse evidence in the matter.

The applicant furnished identical affidavits from [REDACTED] and [REDACTED] dated October 4, 1992, as additional corroborating evidence. The affidavits state that the applicant was employed as a farm laborer for a period of over 90 days during the year ending May 1, 1986, cutting mixed lettuce, cauliflower and broccoli. The affidavits state that because the applicant had no legal documents or social security number, he was paid on a cash basis. They state that the applicant did not receive W-2 Forms or pay stubs.

¹ The AAO notes that the applicant claims to have worked for [REDACTED] from May 1985 to August 1985.

² The Form I-705 affidavit states that [REDACTED] is a farm labor contractor.

These affidavits fail to provide specific and concrete information on the applicant's qualifying employment during the requisite period. For instance, neither of the affiants provides the name and location of the farm where the applicant claims to have been employed. Nor do the affiants explain how they were able to date the applicant's employment during the requisite period. Furthermore, the affiants' assertion that the applicant was cutting mixed lettuce, cauliflower and broccoli is inconsistent with the applicant's Form I-700 application and Form I-705 affidavit. The application and affidavit list the applicant's field work as thinning and hoeing cantaloupes. For these reasons, the affidavits are not credible and are of little evidentiary value. Therefore, the AAO finds that pursuant to *Matter of Ho, supra*, the applicant has failed to submit objective evidence to overcome the adverse information in the record.

In conclusion, 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.