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U. S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

**U.S. Citizenship
and Immigration
Services**

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FILE: [REDACTED]
XPW-80-702-01941

Office: CALIFORNIA SERVICE CENTER

Date:

JUN 05 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 asserted that he cannot prove his agricultural employment with papers because he worked with a different name and social security number. He stated that his ex-boss of [REDACTED] could be contacted to verify his employment from 1985 to 1986 as a lemon picker and tractor driver.

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 April 18, 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] cleaning and irrigating grapefruit and lemon crops from May 1985 to May 1986 for 90 days. Where applicants were asked to list the farm name and

location, the applicant listed [REDACTED] as the farm name; however the farm location is illegible. The applicant left blank part #23 of the application, where applicants are asked to list all periods of residence in the United States since May 1, 1983.

The applicant submitted a Form I-705, Affidavit Confirming Seasonal Agricultural Employment, from [REDACTED]. The affidavit shows that the applicant was employed by [REDACTED] at the Rio Bravo Farm in Kern County, California from October 1985 to April 1986 for 118 days, picking citrus. The applicant furnished a declaration from [REDACTED], which states that he is the foreman of Rio Bravo. It states that the applicant was employed by Rio Bravo from October 1985 to April 1986. The declaration indicates that the applicant was paid by cash and employment records are not available for the company.

In denying the application, the director noted that the applicant's Form I-700 application states that he worked over 90 man-days of seasonal agricultural employment for [REDACTED] at [REDACTED] during the requisite period. The director noted that no other agricultural employment was claimed at the time the applicant filed his application. The director found the application to be inconsistent with the Form I-705 affidavit the applicant submitted to the legalization office. The director noted that the affidavit states that the applicant was employed with [REDACTED] at Rio Bravo for over 90 man-days from October 1985 to April 1986. The director determined that the applicant offered no explanation for the revised claim or for his failure to initially claim his employment with [REDACTED].

On appeal, the applicant asserted that he cannot prove his agricultural employment with papers because he worked with a different name and social security number. He stated that his ex-boss of Cheulane Co., [REDACTED], could be contacted to verify his employment from 1985 to 1986 as a lemon picker and tractor driver.

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 AAO finds that the applicant's statement does not overcome the basis for denial. 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.