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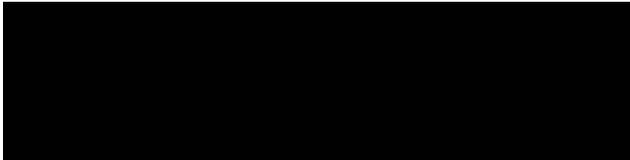
U. S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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FILE: [REDACTED]
XOX 88 591 3065

Office: CALIFORNIA SERVICE CENTER

Date: JUN 08 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.

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The denial 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 denied the application because he found that the 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.

On appeal, the applicant furnished affidavits attesting to his agricultural employment during the requisite period. 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 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 filed a Form I-700, Application for Temporary Resident Status as a Special Agricultural Worker, on March 7, 1987. At part #22 of the application 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] picking strawberries from May 6, 1985 to December 17, 1985 for 103 days. Where applicants were asked to list the farm name and location, the applicant listed Santa Maria, California; however he failed to list the farm name.

The applicant furnished an affidavit from [REDACTED], dated January 22, 1988. The affidavit indicates that the applicant was employed by [REDACTED] to irrigate, hoe and pick his crop from May 6, 1985 to December 17, 1985 for a total period of 103 days.

In denying the application, the director found that applicant had failed to submit evidence sufficient to overcome the grounds for denial expressed in the 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] provided the former Immigration and Naturalization Service (INS) with a list of individuals who worked for him and to whom he provided affidavits of employment, and exemplars of his signature. The director determined that the applicant's name is not on the list, and [REDACTED] signature on the applicant's supporting documentation does not match the exemplars. The director concluded that the applicant's employment documents can no longer be considered credible evidence for this reason.

On appeal, the applicant asserts that at the time he submitted his first application he did not state all of his employers because he did not have verifications available. The applicant states that he is submitting a verification letter from an employer he located and attestations from individuals that knew him during the requisite period.

The applicant furnished a Form I-705, Affidavit Confirming Seasonal Agricultural Employment, from [REDACTED] in California. The affidavit, dated February 24, 1992, states that [REDACTED] has personal knowledge of the applicant's employment at [REDACTED], located at "S.L.O. County" in California, harvesting strawberries for 95 days from May 1, 1985 to May 1, 1986.

The applicant also furnished witness affidavits, dated February 24, 1992, from [REDACTED] and [REDACTED]. The witness affidavit from [REDACTED] provides that he has resided with the applicant since 1985. It states that he has personal knowledge of the applicant's employment harvesting strawberries at the ranch located at [REDACTED]. The witness affidavit from [REDACTED] provides that he is a close friend of the applicant and [REDACTED]. The affidavit states that he is witness to the fact that the applicant was working in agriculture during the period of May 1, 1985 to May 1, 1986. It states that [REDACTED] had a ranch in San Luis Obispo County, and he harvested strawberries. Finally, the witness affidavit from [REDACTED] provides that he is witness to the fact that the applicant has resided and worked in the United States since 1985. It

states that the applicant was working at different ranches, including [REDACTED] located in Arroyo Grande, California, harvesting strawberries.

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 denied the application based on adverse information related to the applicant's claim of employment for [REDACTED]. The AAO observes 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.

The applicant has on appeal put forth a new claim of qualifying agricultural employment for [REDACTED]. However, the applicant failed to state his employment with [REDACTED] on his Form I-700, during his legalization interview, or in response to the NOID. The applicant indicated that he did not initially list his employment with [REDACTED] because he did not have verifications available. The AAO finds that this is not a reasonable explanation. First, the Form I-700 requests applicants to list all field work in perishable commodities from May 1, 1983 to May 1, 1986, regardless of corroborating documentation. Second, the applicant listed on the Form I-700 application his agricultural employment outside the requisite period, indicating that he intended to show all of his fieldwork in perishable commodities on the application. Further, the witness affidavits related to the applicant's claimed employment with [REDACTED] fail to explain how the affiants were able to date the applicant's employment. For these reasons, the AAO finds that the applicant's attempts to now establish his employment with [REDACTED] do not overcome the basis for the director's denial.

Therefore, 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.