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



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**



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Date: JUL 19 2011

Office: WESTERN SERVICE CENTER

FILE: 

IN RE:

Applicant: 

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:



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 "D. Rhew".

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Application for Temporary Resident Status as a Special Agricultural Worker was denied by the director of the Western Service Center. The AAO *sua sponte* reopens the proceeding and withdraws its decision dated February 18, 1999.<sup>1</sup> The appeal will be sustained.

On March 1, 1988, the applicant submitted a Form I-700, Application for Temporary Resident Status as a Special Agricultural Worker under section 210 of the Immigration and Nationality Act, 8 U.S.C. § 1160. On January 6, 1992, the director denied the application, finding that the applicant failed to establish the performance of at least 90 man-days of qualifying agricultural employment during the eligibility period. The director's decision was based on adverse information regarding the applicant's claim of employment for [REDACTED] at [REDACTED]. More specifically, the director determined that the record did not credibly establish that the applicant performed the qualifying agricultural employment, because the applicant's purported employer, [REDACTED], was not on a list of growers contracted by [REDACTED] during the period from October 1, 1985 to approximately August 12, 1986. The applicant filed an appeal, stating that she worked for [REDACTED] (the applicant's brother) and [REDACTED] husband and wife. On February 18, 1999, the AAO remanded the case, finding that the adverse evidence in the record was not sufficient to support the director's decision to deny the application because of the following: [REDACTED] was on the list of contractors, mentioned above, listing the same address as that provided by his wife, [REDACTED] for the applicant's employment documentation; an affidavit provided by [REDACTED] confirmed the applicant's qualifying agricultural employment; and, the AAO found it believable that, since [REDACTED] and Ismael [REDACTED] are part of the same business enterprise, it would be common for them to sign documentation interchangeably, and for Furukawa to list only one of them on the contractors list. The AAO noted that there was no additional basis stated by the director as a basis for the denial of the application. Therefore, the AAO remanded the case for the director to render a new decision. A new decision was not rendered in the case. Counsel requests a *sua sponte* reopening of the case. In response, the AAO has *sua sponte* reopened its prior decision. The February 18, 1999 decision of the AAO will be withdrawn.

The AAO has reviewed all of the evidence, and has made a *de novo* decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the evidence.<sup>2</sup>

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).

<sup>1</sup> Motions to reopen a proceeding or reconsider a decision on an application for permanent resident status under section 1104 of the LIFE Act are not permitted. 8 C.F.R. § 245a.20(c). The AAO may, however, *sua sponte* reopen any proceeding conducted by the AAO under 8 C.F.R. § 245a and reconsider any decision rendered in such proceeding. 8 C.F.R. § 103.5(b).

<sup>2</sup> The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

On the I-700 application, the applicant claimed to have performed 115 man-days of qualifying agricultural employment for [REDACTED] in Santa Barbara, California from May 1985 to August 1987.

Generally, the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility, and amenability to verification. 8 C.F.R. § 210.3(b)(1). Evidence submitted by an applicant will have its sufficiency judged according to its probative value and credibility. 8 C.F.R. § 210.3(b)(2). Personal testimony by an applicant which is not corroborated, in whole or in part, by other credible evidence (including testimony by persons other than the applicant) will not serve to meet an applicant's burden of proof. 8 C.F.R. § 210.3(b)(3).

There is no mandatory type of documentation required with respect to the applicant's burden of proof; however, the documentation must be credible. All documents submitted must have an appearance of reliability, *i.e.*, if the documents appear to have been forged, or otherwise deceitfully created or obtained, the documents are not credible. *United Farm Workers (AFL-CIO) v. INS*, Civil No. S-87-1064-JFM (E.D. Cal.).

In support of the claim, the applicant submitted employment documentation signed by [REDACTED] and [REDACTED], and a Form I-705, affidavit confirming seasonal agricultural employment, filed contemporaneously with the I-700 application. The contemporaneous documents submitted by the applicant appear to be credible. The witness statements submitted by the applicant appear to be credible and amenable to verification in that they include contact telephone numbers and/or contact addresses.

In addition, the director has not established that any inconsistencies exist *within* the claims made on the supporting documents, or that the documents contain false information. As stated in *Matter of E-M-*, 20 I&N Dec. at 80, when something is to be established by a preponderance of the evidence, the proof submitted by the applicant has to establish only that the asserted claim is probably true. That decision also states that, under the preponderance of evidence standard, an application may be granted even though some doubt remains regarding the evidence. *Id.* at 79. The documents that have been furnished in this case may be accorded substantial evidentiary weight and are sufficient to meet the applicant's burden of proof of residence in the United States for the requisite period.

The applicant has credibly established by a preponderance of the evidence the performance of at least 90 man-days of qualifying agricultural employment during the twelve-month statutory period ending May 1, 1986. Consequently, the applicant has overcome the particular basis of denial cited by the director. The applicant is eligible for adjustment to temporary resident status as a special agricultural worker. The appeal will be sustained. The director shall continue the adjudication of the application for temporary resident status.

**ORDER:** The appeal is sustained.