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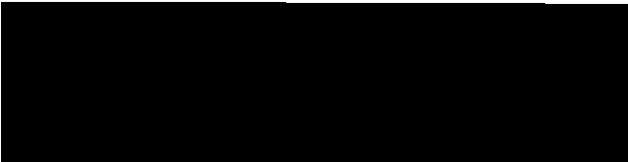
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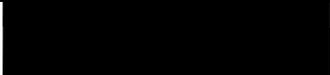


**U.S. Citizenship
and Immigration
Services**

L4



FILE:



XEC-88-114-1124

Office: TEXAS SERVICE CENTER

Date:

FEB 26 2009

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:

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 "J. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The Application for Temporary Resident Status as a Special Agricultural Worker was denied by the Director, Texas Service Center. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The Director, Western Regional Processing Facility, initially denied the application because the applicant failed to appear for two scheduled interviews. The applicant appealed the decision to the Legalization Appeals Unit (now the Administrative Appeals Office or AAO). The LAU found no evidence that the applicant failed to appear for two scheduled interviews and remanded the matter for a decision on the merits of the application. The Director, Texas Service Center, has now issued a new decision to deny the application because the applicant failed to establish the performance of at least 90 man-days of qualifying agricultural employment during the eligibility period.

On appeal, the applicant addresses the inconsistencies in his documentary evidence. 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.

On March 3, 1988, the applicant filed with the Immigration and Naturalization Service (INS) a Form I-700, Application for Temporary Resident Status as a Special Agricultural Worker. At part #22 of the application where applicants are asked to list all fieldwork in perishable commodities from May 1, 1983 through May 1, 1986, the applicant showed that he was employed with [REDACTED] at a farm located in Los Angeles, California as a citrus laborer. The applicant showed that he was employed from May 1, 1985 to May 1, 1986 for a period of over 90 days. The applicant also showed that he was employed by "various" employers, but failed to provide any other information on this employment.

The applicant furnished as corroborating evidence a letter from [REDACTED] of [REDACTED], dated August 12, 2005. [REDACTED] states that he does not have employee records under the applicant's name from 1985. He indicates that it is his belief that the applicant worked for a labor contractor hired to work in his fields in 1985.

[REDACTED] assertions are vague and lack specific detail on the applicant's qualifying agricultural employment for at least 90 man-days during the 12 month period ending May 1, 1986. For instance, [REDACTED] does not provide the name of the farm labor contractor that hired the applicant to work at his farm. Nor does he indicate the months in 1985 that the applicant was employed at his farm. It is, therefore, unknown whether the applicant was employed at the [REDACTED] for at least 90 man-days during the requisite period. Further, [REDACTED] does not explain how he was able to date the applicant's employment at his farm without any employee records. Given the numerous deficiencies in this letter, it is of minimal probative value as corroborating evidence.

The record reflects that the applicant was interviewed in connection with his application at the Los Angeles Field Office on September 27, 2007. On November 3, 2007, the Field Office Director, Los Angeles, issued a Notice of Intent to Deny (NOID) to the applicant. The director stated that during the applicant's interview he claimed to have performed at least 90 man-days as a seasonal agricultural worker for [REDACTED] during the twelve month period ending on May 1, 1986. The director noted that USCIS contacted [REDACTED] to verify the applicant's employment at his farm. The director found that [REDACTED] was not able to recall the period that the applicant was employed with him and could not recognize the name of [REDACTED] the labor contractor listed as the applicant's employer on his Form I-700.

In rebuttal to the NOID, the applicant furnished a letter from [REDACTED] of [REDACTED] dated December 1, 2007. [REDACTED] states that the applicant worked on his farm during the years 1980 to 1985. He states that during those years he used the labor contractor [REDACTED] who is now deceased. [REDACTED] indicates that he does not have any payroll records.

█'s assertions are also vague and lack specific detail on the applicant's qualifying agricultural employment for at least 90 man-days during the 12 month period ending May 1, 1986. █ fails to indicate the months in 1985 that the applicant was employed at his farm. It is, therefore, unknown whether the applicant was employed at the █ for at least 90 man-days during the requisite period. Additionally, █ does not explain how he was able to date the applicant's employment at his farm without any employee records. Moreover, it should be noted that █'s assertions are not supported by the record. The only location of employment the applicant showed on his Form I-700 application was at a farm in Los Angeles, California. According to █ letter, █ is located at Dinuba, California. The applicant stated that he was employed at "various" other locations; however he failed to provide any information on these locations. It is reasonable to expect the applicant to list the █ on his application since he purportedly was employed at the farm from 1980 to 1985. The applicant's failure to provide this information on his initial application casts doubt upon the credibility of his claim of qualifying employment at the █ during the requisite period. Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). Therefore, this letter is of minimal probative value as corroborating evidence.

On July 2, 2008, the director, Texas Service Center, issued a notice to deny the application. The director found the letter from █ to be inconsistent with the applicant's Form I-700 application because it does not list farm labor contractor █ as his employer. The director determined that because of the inconsistencies between the applicant's Form I-700 and the letter from █ it is highly unlikely that the applicant meets the statutory requirements for temporary residence under section 210 of the Act.

On appeal, the applicant asserts that on his Form I-700 he stated that he was employed under █ and various other employers. He notes that when he filled out the application, he did not remember all of the employers or labor contractors. The applicant states that he was unable to locate █. The applicant contends that he located another employer, █ who gave him the letter for his employment through the labor contractor █. The applicant maintains that he never stated that █ worked for █.

The applicant's explanations do not overcome the primary basis for denial. The applicant has not established by a preponderance of the evidence his eligibility for temporary residence. The applicant has failed to provide credible, probative and reliable evidence of his residence in the United States during the requisite period. As stated, the letters from █ and █ contain numerous deficiencies that render them of only minimal probative value. The applicant has not furnished any other corroborating evidence in support of his application. Upon a *de novo* review of the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that he is eligible for the benefit sought.

Therefore, based upon the foregoing, 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.