



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

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF M-Q-D-

DATE: JAN. 21, 2016

MOTION OF ADMINISTRATIVE APPEALS OFFICE DECISION

APPLICATION: FORM I-700, APPLICATION FOR TEMPORARY RESIDENT STATUS AS
A SPECIAL AGRICULTURAL WORKER

The Applicant, a native and citizen of Mexico, seeks status as a temporary resident. *See* Immigration and Nationality Act (the Act) § 210, 8 U.S.C. § 1160. The application was denied by the Director, Western Regional Processing Facility. The Applicant appealed the Director's adverse decision. At the Director's request, we remanded the case for further processing. The Director, Western Service Center, now California Service Center, reopened the matter and again denied the application. The Applicant appealed. We dismissed the Applicant's appeal on July 12, 2001. The matter is now before us on a motion to reopen and a motion to reconsider. The motions will be denied.

On August 25, 1987, the Applicant filed Form I-700, Application for Temporary Resident Status as a Special Agricultural Worker, claiming that that he performed at least 90 man-days of qualifying agricultural employment during the statutory period ending May 1, 1986, working at three different farms in California. On November 14, 1988, the Director denied the application, finding that the Applicant did not present evidence of the claimed qualifying agricultural employment. On appeal, the Applicant asserted that he was eligible for temporary resident status under section 210 of the Act, because he was employed with [REDACTED] in California between October 1985 and March 1986. We remanded the case for further processing at the Director's request. The Director reopened the matter on February 25, 1991, and issued a notice of intent to deny, in which he requested the Applicant to provide evidence of his claimed qualifying agricultural employment with [REDACTED] during the requisite period. The Applicant responded to the notice by submitting letters from his brother, a purported co-worker, and a declaration from a purported document specialist, who claimed that the [REDACTED] owner would not permit her to view the Applicant's employment records.

On July 10, 1992, the Director denied the application, finding that the documents the Applicant submitted in response to the notice of intent to deny did not establish that he was eligible for temporary resident status under section 210 of the Act. Specifically, the Director determined that the Applicant's claimed employment with [REDACTED] was not qualifying agricultural employment as defined in section 210 of the Act and the corresponding regulations.

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Matter of M-Q-D-

On appeal, the Applicant asserted a new basis of eligibility claiming that he was employed with [REDACTED] in California from September 1985 until March 1986. In support of this claim, the Applicant submitted an undated letter, allegedly from the vice president of [REDACTED] who stated that the company no longer had employment records from the relevant time period and was unable to verify the Applicant's claimed employment with [REDACTED]. In addition, the Applicant made claims of other qualifying employment during the statutory period, but he did not submit sufficient evidence to substantiate those claims.

On July 12, 2001, we dismissed the appeal, concurring with the Director's findings that the Applicant's claimed employment with the tree service company was not qualifying agricultural employment for the purposes of establishing eligibility for temporary resident status under section 210 of the Act. In addition, we determined that the Applicant did not submit sufficient documentation to support the claims of employment he had made during the pendency of his application and appeal or to support any other claim of agricultural employment during the qualifying period. For that reason, we concluded that Applicant did not demonstrate eligibility for temporary resident status as a special agricultural worker pursuant to section 210 of the Act.

The record includes, but is not limited to, affidavits, letters from employers, federal form W-2 wage and tax statements, Form 1040, income tax return, and pay stubs.

On June 6, 2014, the Applicant filed the instant motion. On the Form I-290B, Notice of Appeal or Motion, the Applicant indicates that he worked for [REDACTED] caring for fruits and vegetables, for more than 90 days between 1985 and 1986. He further asserts that he is unable to prove this qualifying agricultural employment, because he was denied access to his own employment information. The Applicant submits no evidence to substantiate these assertions. While the record reflects that the Applicant has claimed that [REDACTED] refused to release his employment records, he has not previously made a similar claim to explain the lack of evidence of his employment at [REDACTED]. The letter from [REDACTED] the Applicant submitted on appeal does not indicate that the company refused to provide the Applicant with his employment records, but rather that it had no such records and thus was unable to confirm or deny that the Applicant worked for the company. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In addition, the Applicant reiterates that he was employed at [REDACTED] from October 1985 to March 1986. In support of this claim, the Applicant resubmits letters from his brother and co-worker and a declaration from a purported document specialist written on California Legalization Service letterhead, which he had presented with his appeal filed in 1992. We have previously considered this evidence on appeal and found that it was insufficient to establish that the Applicant performed at least 90 man-days of qualifying agricultural employment during the statutory period ending May 1, 1986, as required for temporary resident status under section 210 of the Act.

The record includes some evidence of the Applicant's employment in the United States, such as W-2 forms, pay stubs, and a tax return. However, the tax documents relate to the Applicant's employment in 1987, after the end of the statutory employment period. Further, the earliest of the pay stubs the Applicant submitted is for employment period ending on May 9, 1986. Accordingly, the evidence does not demonstrate that the Applicant performed qualifying agricultural employment prior to May 1, 1986, as required under section 210 of the Act.

A motion to reopen must state new facts to be proved in the reopened proceedings and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). In this case, the Applicant does not state new facts or provide new evidence to support a motion to reopen. Therefore, we must deny the Applicant's motion to reopen.

A motion to reconsider must: (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). We have previously addressed the Applicant's claims regarding his qualifying agricultural employment during the statutory period and found that the Applicant did not submit sufficient evidence to substantiate those claims. Accordingly, we find no basis for reconsideration of our prior decision. The instant motion does not identify any precedent decisions or misapplication of law or Service policy sufficient to overcome determination that the Applicant is not eligible for status as temporary resident under section 210 of the Act. Accordingly, we must deny the Applicant's motion to reconsider.

The regulation at 8 C.F.R. § 103.5(a)(1)(i) requires that a motion to reopen or reconsider a proceeding must be filed within 30 days of the underlying decision, and that a motion to reopen must be filed within 30 days, except that failure to file a motion during this period may be excused when the applicant has demonstrated that the delay was reasonable and beyond the control of the applicant. Moreover, whenever a person has the right or is required to do some act within a prescribed period after the service of a notice upon him and the notice is served by mail, three days shall be added to the prescribed period. Service by mail is complete upon mailing. 8 C.F.R. § 103.8(b). Pursuant to 8 C.F.R. § 103.5(a)(4), a motion that does not meet applicable requirements shall be dismissed.

We rendered our decision on July 12, 2001. The motion was received on June 6, 2014, almost 13 years after the date of our decision. The Applicant has not demonstrated that the delay was reasonable and beyond his control. The motion, therefore, is untimely.

Pursuant to 8 C.F.R. 103.5(b), we may *sua sponte* reopen or reconsider a decision under section 210 of the Act, when we determine that manifest injustice would occur if the prior decision were permitted to stand. *See Matter of O--*, 19 I&N Dec. 871 (Comm'r 1989). The Applicant has not provided new facts or additional evidence to overcome the reasons for our decision to dismiss his appeal. Furthermore, we do not find any procedural or other substantive errors in the underlying decisions that would warrant reopening of the Applicant's Form I-700.

Matter of M-Q-D-

The burden of proof in these proceedings rests solely with the Applicant. Section 291 of the Act, 8 U.S.C. § 1361. That burden has not been met. Accordingly, the motions will be denied.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of M-Q-D-*, ID# 15263 (AAO Jan. 21, 2016)