

U.S. Department of Homeland Security

Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, D.C. 20536

FILE:

OFFICE: Nebraska Service Center

DATE:

OCT 28 2003

IN RE: Applicant:

APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

PUBLIC COPY

ON BEHALF OF APPLICANT

INSTRUCTIONS:

Attached is the decision rendered on your appeal. The file has been returned to the Service Center that processed your case. If your appeal was sustained, or if your case was remanded for further action, the Service Center will contact you. If your appeal was dismissed, 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.

Robert P. Wiemann
for
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application for temporary resident status was denied by the Director, Northern Regional Processing Facility. That decision was reviewed by the Legalization Appeals Unit on appeal, and the decision was withdrawn and the case remanded for further action. The Director, Nebraska Service Center, has again denied the application and certified the decision to the Administrative Appeals Office for review. The case will be remanded for further action.

The facility director initially denied the application because he determined the applicant was inadmissible due to a narcotics conviction.

On appeal, counsel submitted evidence which indicated the applicant was sentenced as a "first offender." This office determined the record did not support a finding of ineligibility because, pursuant to precedent decisions, the applicant had no criminal conviction. The case was remanded for a new decision to assess the sufficiency and credibility of the documents submitted by the applicant in support of her claim of continuous residence in the United States during the eligibility period. The center director then denied the application on that basis and certified the decision to this office for review.

An applicant for temporary resident status must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and through the date the application is filed. Section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2).

An applicant for temporary resident status under section 245A of the Act has the burden to establish by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, is admissible to the United States and is otherwise eligible for adjustment of status under this section. 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. § 245a.2(d)(5).

When something is to be established by a preponderance of the evidence it is sufficient that the proof establish that it is probably true. See *Matter of E-M-*, 20 I&N Dec. 77 (Comm. 1989).

Although Citizenship and Immigration Services (CIS) regulations provide an illustrative list of contemporaneous documents that an applicant may submit, the list also permits the submission of affidavits and any other relevant document. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

In an attempt to establish continuous unlawful residence since September 1979, as claimed, the applicant has furnished the following evidence:

- (1) A registered mail receipt in the applicant's name dated March 12, 1981.
- (2) Receipts issued to the applicant by the Illinois Masonic Medical Center on November 15, 1982; December 2, 1982; November 22, 1983; December 20, 1983; January 31, 1984; and February 21, 1984.
- (3) Money order receipts purchased by an individual named [REDACTED] during the period February 22, 1982 to September 30, 1982; May 9, 1983; five on March 1, 1983; two on March 30, 1983; and one on an undisclosed date in 1983.
- (4) Receipts for rental of the premises at 3336 North Lincoln Avenue, issued to a [REDACTED] from January 1984 to December 1984.
- (5) Copies of two leases dated August 25, 1985 and July 7, 1987 for rental of the premises located at 3718 North Hoyne, Chicago, Illinois, by [REDACTED] the applicant and her husband.
- (6) Copies of a birth certificate and baptismal certificate for the applicant's daughter who was born in Chicago, Illinois on December 1, 1982.
- (7) A store lease dated September 13, 1981 in the name of [REDACTED] for rental of the premises located at 3336 North Lincoln, Chicago, Illinois.
- (8) Tax returns for [REDACTED] for the years 1982, 1983, 1984, and 1986.
- (9) Copies of tax assessments in the name of [REDACTED] for the Angela's Bridal Boutique partnership for the period October 1981 to December 1981; May 1982; and May 1982.
- (10) A money order receipt dated January 31, 1985 payable to Homehealth Education Services, purchased by [REDACTED]
- (11) Immunization records for the applicant's daughter for the period March 15, 1983 to September 25, 1986; and for her son for the period July 2, 1984 to September 25, 1986.
- (12) Affidavit from [REDACTED] who states she has known the applicant since 1985.

(13) Affidavit from Juan A. Romero, who states he has been a customer of the applicant since 1981.

On her original Form I-687, Application for Status as a Temporary Resident, the applicant stated that she had also been known by the names Joanna Martinez and Tomasa Morena.

On February 4, 1999, the applicant was requested to submit a certified affidavit, with her photograph attached, from her past and present employers, stating that she was also known by her alias during any period of employment. The applicant's response included a copy of her passport, her birth certificate, birth certificates and baptismal certificates for her children, police records, and affidavits from two individuals attesting to the length of time they have known the applicant. On March 26, 1999, the applicant was requested to explain why she had used two different names and provided with the opportunity to submit evidence that she and [REDACTED] are one and the same. The record does not reflect that the applicant responded to the March 26, 1999 letter. The director determined that the applicant had not shown that she had resided in the United States for the requisite period of time and, therefore, and denied the application for a second time.

In the present case, the applicant claimed on the Form I-687 application that she had used the names [REDACTED]. She submitted evidence in the name of [REDACTED] with her application. In response to the director's request for affidavits from former employers to establish common identity, the applicant stated she was unable to provide affidavits from employers because she had always been self-employed. This is consistent with the applicant's claim on the Form I-687 application. The applicant submitted an affidavit from [REDACTED] who stated she has known the applicant since 1985, and from [REDACTED], who stated he was a customer of the applicant and that he had known her since 1981.

While the director stated in the second denial that much of the evidence submitted by the applicant was in the names of [REDACTED] and that affidavits submitted by the applicant were from her friends, he did not establish the information in the affidavits was inconsistent with the claims made on the application, or that it was false information. Affidavits in certain cases can logically meet the preponderance of evidence standard.

More importantly, the applicant has submitted a sufficient amount of significant contemporaneous evidence in her own name covering the years 1981-1987. When an individual provides leases, tax returns, and birth certificates and health records for her United States-born children, the overall inference is that she was

residing in the United States, absent evidence to the contrary. While this office first raised the issue of common identity, the fact remains that, logically, if an applicant has provided sufficient evidence in her own name, it is not significant that she provided other evidence in the name of her (claimed) alias.

As stated in *Matter of E--M--*, *supra*, when something is to be established by a preponderance of evidence, the applicant only has to establish that the proof is probably true. The contemporaneous documents in the applicant's own name must be accorded substantial evidentiary weight. The applicant's claim of entry prior to January 1, 1982 and continuous residence since such date is credible and probably true. Therefore, the applicant has established eligibility by a preponderance of the evidence as required by 8 C.F.R. § 245a.2(d) and *Matter of E--M--*, *supra*.

There are no known grounds of ineligibility, and it appears the application could be approved, except for the fact that the validity of the fingerprint check has now expired. The director shall conduct another fingerprint check, and any other required checks, and then complete the adjudication.

ORDER: The case is remanded for action and consideration consistent with the above.