

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042.
Washington, DC 20529



U.S. Citizenship and Immigration Services

PHOTO COPY

LI



FILE:



Office: TEXAS SERVICE CENTER

Date: SEP 23 2009

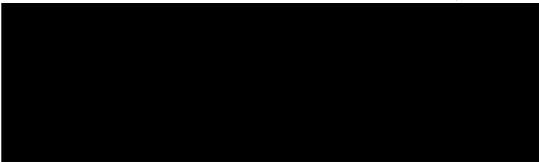
IN RE:

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

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. 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, Director
Administrative Appeals Office

DISCUSSION: The application for temporary resident status was denied by the Director, Southern Regional Processing Facility. A subsequent appeal was dismissed by the Director, Legalization Appeals Unit. The case is now reopened. The appeal will be sustained.

In his decision, the Director, Southern Regional Processing Facility determined that the applicant had failed to provide sufficient evidence of residence for the required period.

The Director, Legalization Appeals Unit dismissed the appeal because the applicant had evidently filed a frivolous appeal.

Pursuant to 8 C.F.R. § 103.5(b), the Administrative Appeals Office will *sua sponte* reopen or reconsider a decision under section 245A of the Immigration and Nationality Act when it determines that manifest injustice would occur if the prior decision were permitted to stand. *Matter of O-*, 19 I&N Dec. 871 (Comm. 1989)

Prior counsel for the applicant furnished evidence well before the appellate decision was rendered; however, such evidence was not entered into the record in time for it to be considered. In light of that, the matter will be reopened.

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. 8 C.F.R. § 245a.2(d). When something is to be established by a preponderance of evidence it is sufficient that the proof only establish that it is probably true. See *Matter of E—M--*, 20 I&N Dec.77 (Comm. May 24, 1989).

Although Service 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 documents. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

In an attempt to establish continuous unlawful residence since 1978, the applicant has furnished the following evidence:

- (1) His pay stub for the pay period ending January 25, 1988;
- (2) A high school diploma issued to the applicant in Dallas in 1981;

- (3) A Social Security Administration printout, showing the applicant's earnings for each year from 1980 through 1990;
- (4) A letter of employment, verifying the applicant's employment at T.G.I. Fridays from 1985 to 1989;
- (5) A letter of employment from [REDACTED] verifying his 1985 to 1989 employment;
- (6) A 1991 affidavit from [REDACTED] attesting to the applicant's continuous residence;
- (7) A 1991 affidavit from [REDACTED] attesting to the applicant's continuous residence.

In addition to the material the applicant submitted, the pre-existing Immigration and Naturalization Service (INS) file contained Form I-94, Arrival/Departure Record, showing the applicant was admitted to the United States as a student on August 28, 1978. Other material in the file included an Order to Show Cause directed to the applicant on November 29, 1979, a decision of the Immigration Judge dated October 5, 1983, and a decision of the Board of Immigration Appeals dismissing his appeal dated April 8, 1985. Later INS documents in the file make it clear that the applicant did not depart the United States even after that appeal was dismissed.

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 documents the applicant submitted, and particularly the government documents in his INS file, are more than sufficient to demonstrate that he resided in the United States in an unlawful status for the requisite period. His continuous residence has not been interrupted by deportation or absence due to any other reason.

ORDER: The appeal is sustained.