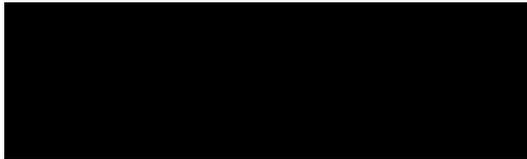




U.S. Citizenship
and Immigration
Services

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



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FILE: 

Office: CALIFORNIA SERVICE CENTER

Date:

IN RE: Applicant: 

JAN 27 2004

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: Self-represented

CONFIDENTIAL

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, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained.

In his decision, the director determined that the applicant had failed to provide sufficient evidence of residence for the required period. The director found that the affidavits attesting to the applicant's residence were generally insufficient, and he pointed out that the applicant had not explained why no other evidence was available.

On appeal, the applicant provides three more affidavits attesting to his residence during the period in question.

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). Preponderance of the evidence has also been defined as "evidence which as a whole shows that the fact sought to be proved is more probable than not." Black's Law Dictionary 1064 (5th ed. 1979).

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 1981, the applicant has furnished 12 affidavits and 2 letters of employment on letterhead stationary. Some affiants indicate the applicant lived with them at times, which may help explain why the applicant is unable to provide actual contemporaneous evidence such as rent receipts in his own name. Numerous affiants state they know the applicant has resided in the United States since December 1981. Others only refer to more limited periods of time during the requisite 1982-88 period, which seems realistic given the fact that not all affiants would have met the applicant at the same time. Most of the 14 individuals invite the director to contact him or her further if need be, although there is no evidence the director did so.

The director determined that the affidavits are not corroborated by other credible evidence. He asserted that in order to meet the standard of proof, the applicant must provide evidence of eligibility apart from unsupported affidavits. It is noted that the director did not establish that 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. As stated on *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. That decision also points out that, under the preponderance of evidence standard, an application may be granted even though some doubt remains regarding the evidence.

The documents, including affidavits submitted by persons who are willing to testify in this matter, may be accorded substantial evidentiary weight, and are sufficient to meet the applicant's burden of proof. It is concluded that the applicant has been residing unlawfully in the United States since January 1, 1982.

ORDER: The appeal is sustained.