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U.S. Department of Homeland Security
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U.S. Citizenship
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FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

JUL 28 2005

IN RE:

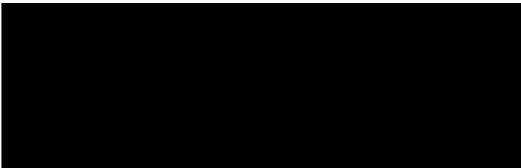
Applicant:



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, Western Regional Processing Facility, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained.

The director denied the application because the applicant failed to establish that she had resided continuously in the United States from prior to January 1, 1982 through the date the application was filed.

On appeal, counsel stated that the applicant had established, by a preponderance of evidence, that she continuously resided in the United States since prior to January 1, 1982. Counsel requested a copy of the applicant's file, and additional time in which to submit a brief. Once the request was complied with, he provided additional evidence, including proof of the approval of the applicant's mother's application.

An applicant for temporary resident status must establish that he or she entered the United States before January 1, 1982, and continuously resided in the United States in an unlawful status since such date and through the date the application is filed. See Section 245A(a)(2)(A) of the Act, 8 U.S.C. § 1255a(a)(2)(A).

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. When something is to be established by a preponderance of the 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).

Sufficient documentation relating to the applicant's medical treatment and school attendance in the United States from January 1984 on exists in the record. For the period prior to that, the applicant relies on the following documents to establish that she resided continuously in the United States:

- An affidavit from [REDACTED] stating that she knew the applicant lived in the United States from July 1981 through the date of the affidavit (September 3, 1987) because she saw her about every two weeks;
- An affidavit from [REDACTED] dated September 3, 1987, indicating that he knew the applicant resided in the United States since July 1981, as she and her parents were weekly customers of his bakery;
- A letter dated March 15, 1990 from [REDACTED] on corporate stationery, indicating that his sales representative duties caused him to develop a business relationship and friendship with the applicant and her family in 1982;
- A letter dated February 28, 1990 from [REDACTED] on corporate stationery, indicating he knew the applicant since 1983 through a business relationship with her father.

These four individuals all provided a means by which they could be contacted for further information, and the letter writers specifically encouraged the director to contact them if need be. The director did not do so,

but found fault with the affidavits because they did not show the exact dates of the applicant's residence, did not indicate whether the residence was continuous, and were unaccompanied by other documentation.

The affidavits cover the period from prior to January 1, 1982 to 1987. It is not necessary that affiants know the exact date an applicant entered the United States; logically, an affiant can only attest to his own personal knowledge of an applicant's residence, based on when he first met the applicant. Furthermore, the affiants did attest to such frequent visits with that applicant that it would be assumed that they were attesting to her *continuous* residence.

The director noted that the letters were not notarized, and did not contain the applicant's address. It is entirely possible that the letter writers were not aware of the applicant's exact address, but that would not mean that they were incapable of attesting to her residence in the United States. Again, if the director had doubts, he could have attempted to contact the letter writers for clarification.

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).

The director determined that the affidavits and letters were 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 and letters 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 the 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 prior to January 1, 1982.

ORDER: The appeal is sustained. The director shall complete the adjudication of the application. If it is granted, he shall advise the applicant of the requirements for applying for adjustment to permanent residence.