

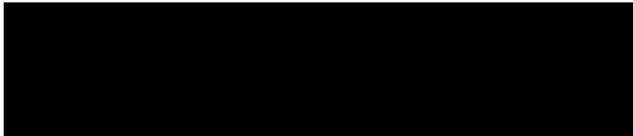


U.S. Citizenship
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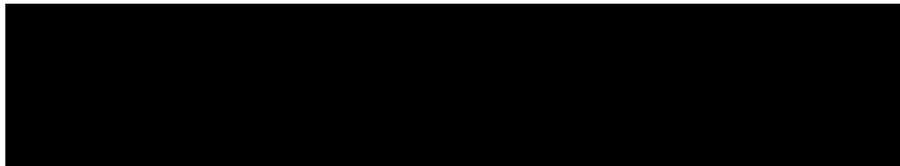
XBI 88 099 2036

Office: NEBRASKA SERVICE CENTER

Date: JUN 14 2007

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: SELF-REPRESENTED

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, Chief
Administrative Appeals Office

DISCUSSION: This matter is an application for temporary resident status denied by the Director, Northern Regional Processing Facility, which is before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The director denied the application because the applicant failed to submit sufficient evidence to establish continuous residence in the United States from January 1, 1982 through February 24, 1988, the date she filed her application for temporary resident status.

On appeal, the applicant reiterates her claim and provides an explanation for being unable to provide additional evidence establishing her residence in the United States.

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 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 document. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

In an attempt to establish continuous unlawful residence since prior to January 1, 1982, as claimed, the applicant has furnished the following evidence:

1. The applicant's own sworn statement claiming to have resided with her uncle from November 1981 until May 1986. She further claimed that she babysat for cash, which she used for her own personal expenses.
2. Two sworn affidavits from [REDACTED], the applicant's uncle, reiterating the applicant's claim and restating her various addresses in the United States.
3. Two sworn affidavits from [REDACTED] stating that she knows the applicant because they resided in the same building from 1981 to May 1986. The affiant claimed that the applicant babysat her children for \$50 per week from January 1982 until September 1983.
4. A sworn affidavit from [REDACTED] who claimed to be the applicant's neighbor from November 1981 until May 1986.

5. Photocopies and originals of the beneficiary's W-2 statements from 1986 and 1987, both identifying CP Enterprises as the applicant's employer.
6. An affidavit for domicile dated February 22, 1988. The affidavit appears to have been signed by [REDACTED], who claims to be the owner of the premises occupied by the applicant and her husband from June 1987 until February 1988.
7. A sworn statement from [REDACTED] attesting to the applicant's residence from May 1986 to April 1987.
8. A domicile affidavit from [REDACTED] claiming that the applicant and her husband resided at [REDACTED] from April to June 1987. The affiant did not identify herself either as owner or manager of the premises.
9. An affidavit from [REDACTED] who claimed to have met the applicant through his wife in December 1981. He claimed that the applicant babysat for him and his wife occasionally on the weekends. The affiant listed the same addresses in the identical order as they were listed in [REDACTED] affidavit.
10. An affidavit from [REDACTED] identifying himself as the applicant's cousin. He also recited the applicant's addresses from November 1981 through February 1988.
11. An employment verification letter dated December 4, 1987 from CP Enterprises stating that the applicant has been employed with the company since September 15, 1986.
12. An affidavit from [REDACTED] stating that the applicant worked for her as a babysitter from September 1983 to August 1986. The affiant stated that the applicant was paid in cash.

While 8 C.F.R. § 245a.2(d)(3) sets forth specific criteria which affidavits of residence from employers and organizations should meet to be given substantial evidentiary weight, we look to *Matter of E M*, for guidance in determining the appropriate criteria for affidavits from other third party individuals. *Id.*

In the present matter, the director primarily based his decision on the fact 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*, when something is to be established by a preponderance of evidence, the applicant only has to establish that the proof is probably true. *Id.*

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 of residence in the United States for the requisite period.

The applicant's inability to submit additional contemporaneous documentation of residence is not found unduly implausible, considering all factors. It is concluded that the applicant has been residing unlawfully in the United States since January 1, 1982. There are no known grounds of ineligibility present.

ORDER: The appeal is sustained. The application for temporary resident status is approved.