



U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE:

[Redacted]

Office: CALIFORNIA SERVICE CENTER

Date:

XVN 88 504 3085

MAR 14 2007

IN RE:

Applicant:

[Redacted]

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:

[Redacted]

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 the matter 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: The application for temporary resident status was denied by the Director, Western Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status from prior to January 1, 1982 through May 4, 1988.

On appeal, the applicant states that he entered the United States prior to January 1, 1982, and has resided in this country since that date. He submits additional evidence in support of his statement.

An applicant for temporary residence 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. *See* Section 245A(a)(2) of the Act and 8 C.F.R. § 245a.2(b).

An alien applying for adjustment of status has the burden of proving 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 under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. *See* 8 C.F.R. § 245a.2(d)(5).

The applicant stated on his Form I-687, Application for Status as a Temporary Resident, that he entered the United States on February 14, 1981. In support of the application, he submitted the following evidence:

1. a "Declaration of Employer" from [REDACTED] stating that the applicant had worked for his company, Raymart Tree Service, since October 19, 1985;
2. an affidavit dated September 13, 1988 from [REDACTED] stating that she met the applicant at a party in July 1983 and attesting that he had lived in Panorama City, California, from July 1983 to the date of the affidavit; and,
3. an affidavit dated September 13, 1988 from [REDACTED] stating that she met the applicant at a friend's house and attesting that the applicant had lived in Panorama City, California, from July 1983 to the date of the affidavit.

The record shows that the applicant appeared for his legalization interview on September 14, 1988. The notes of the interviewing officer indicate that the applicant stated he had no further evidence to submit to establish his continuous residence in the United States during the requisite period.

On October 19, 1992, the applicant was requested to provide additional evidence to establish his continuous residence in the United States from prior to January 1, 1982 through June 1983. The record does not contain a response from the applicant.

The director denied the application on May 18, 1994, because the applicant failed to establish continuous residence in the United States from prior to January 1, 1982 to May 4, 1988, the filing date of the application.

On appeal, the applicant repeats his claim of continuous residence in the United States during the requisite period. He submits the following affidavits in support of his claim:

4. an affidavit dated April 10, 1994 from [REDACTED] stating that he had known the applicant since February 14, 1981 and that the applicant had resided at the following addresses: [REDACTED] San Fernando, CA 91340; [REDACTED] North Hollywood, CA 91604; and [REDACTED], Pacoima, CA 91331;
5. an affidavit dated April 10, 1994 from [REDACTED] stating that she had known the applicant since February 14, 1981, and that the applicant had resided at the following addresses: [REDACTED] San Fernando, CA 91340; [REDACTED], North Hollywood, CA 91604; and [REDACTED] Pacoima, CA 91331; and,
6. an affidavit dated April 10, 1994 from [REDACTED] stating that he had known the applicant since February 14, 1981 and that the applicant had resided at the following addresses: [REDACTED], San Fernando, CA 91340; [REDACTED], North Hollywood, CA 91604; and [REDACTED], Pacoima, CA 91331.

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document including affidavits is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that "[t]ruth is to be determined not by the quantity of evidence alone but by its quality." *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is "probably true" or "more likely than not," the applicant or petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (defining "more likely than not" as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate

for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

At issue in this proceeding is whether the applicant has submitted sufficient evidence to 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 May 4, 1988. In this case, the submitted evidence is not sufficient to establish by a preponderance of the evidence the applicant's claim of continuous residence in the United States during the requisite period.

[REDACTED] (No. 1 above) stated that the applicant had worked for his company, Raymart Tree Service, since October 19, 1985, but he does not provide any information regarding the applicant's duties for his company or the address(es) at which the applicant had resided during his employment for that company. Neither the applicant nor [REDACTED] has provided any independent evidence to corroborate the applicant's claim to have worked for Raymart Tree Service such as employee records or pay stubs.

[REDACTED] (No. 2 above) and [REDACTED] (No. 3 above) both stated that they met the applicant at a party in July 1983 and had been friends with the applicant since that time, but neither affiant provided the address(es) at which the applicant had resided since they met him in July 1983.

[REDACTED] (No. 4 above) stated that he had known the applicant since February 14, 1981, and provided a list of addresses at which the applicant had resided since that date. However, Mr. [REDACTED] did not provide the applicant's inclusive dates of residence at each of the listed addresses. It appears that [REDACTED] is the same individual who provided the affidavit listed at No. 1 above stating that the applicant had worked for Raymart Tree Service since October 19, 1985. However, [REDACTED] provided no information in the affidavit listed at No. 4 above regarding the applicant's purported employment by his company.

[REDACTED] (No. 5 above) and [REDACTED] (No. 6 above) both stated that they had known the applicant since February 14, 1981, the date on which he claims to have entered the United States, but neither affiant provided any information regarding the nature of their acquaintance with the applicant or the applicant's dates of residence at each of the addresses listed in their affidavits.

The evidence submitted by the applicant relating to his residence in the United States from prior to January 1, 1982 to the filing date of the application lacks sufficient detail and do not contain sufficient verifiable information. Furthermore, the applicant has not submitted any contemporaneous evidence dated during the period from January 1, 1982 to May 4, 1988, the filing date of the application.

The applicant has failed to submit sufficient documentation to meet his burden of proof in establishing that he has resided in the United States since prior to January 1, 1982 to May 4, 1988 by a preponderance of the evidence as required under both 8 C.F.R. § 245a.12(e) and *Matter of E-M-*, 20 I&N Dec. 77 (Comm. 1989).

Given the applicant's reliance upon supporting documents with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through May 4, 1988 as required under. The applicant is, therefore, ineligible for temporary resident status.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.