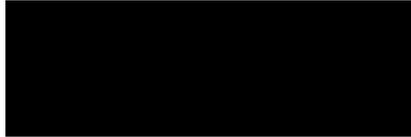




U.S. Citizenship  
and Immigration  
Services

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invasion of personal privacy



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FILE: [REDACTED]  
XHO 88 518 1033

Office: CALIFORNIA SERVICE CENTER

Date: MAR 21 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: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 failed to submit sufficient evidence to establish continuous residence in the United States from prior to January 1, 1982 to the filing date of his application. The director also denied the application because the applicant failed to submit proof of financial responsibility.

On appeal, the applicant states that he never received the request for additional evidence and submits additional evidence in an attempt to establish his eligibility for temporary resident status.<sup>1</sup>

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).

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.

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<sup>1</sup> It is noted that, although the applicant stated on appeal that he did not receive the notice of intent to deny, he submitted a copy of the notice of intent to deny with the appeal. It appears that the applicant did, in fact, receive the notice of intent to deny his application for temporary resident status.

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.

The first issue in this proceeding is whether the applicant has established continuous residence in the United States from prior to January 1, 1982 to the filing date of his application.

The applicant claimed on his Form I-687, Application for Status as a Temporary Resident, that he entered the United States without inspection on June 20, 1978. In support of his application, he submitted the following evidence

1. a letter dated August 9, 1987 from [REDACTED] a general contractor in Los Angeles, California, stating that the applicant worked for him as a mason helper in August 1983;
2. an affidavit dated April 20, 1988 from [REDACTED] attesting to the applicant's residence in the United States from March 1982 to the date of the attestation; and,
3. a California Division of Motor Vehicles printout indicating that the applicant was issued a California Identification card on June 5, 1986.

The applicant appeared for his legalization interview on September 26, 1988. The notes of the interviewing officer indicate that the applicant had not submitted sufficient evidence of continuous residence during the requisite period or proof of financial responsibility.

On April 10, 1989, the applicant was requested to submit additional evidence to establish his continuous residence in the United States from prior to January 1, 1982 to 1983. The notice was mailed to the applicant at his address of record, but the applicant failed to respond to the notice.

The director denied the application on August 20, 1993, because the applicant failed to establish continuous residence in the United States during the requisite period.

On appeal, the applicant submits the following relevant evidence:

4. an affidavit dated August 21, 1993 from [REDACTED] stating that he met the applicant in 1978 and they have been very close friends since that time;
5. an affidavit dated August 25, 1993 from [REDACTED] stating that he had known the applicant since 1978 and they were friends;

6. a letter in the Spanish language from [REDACTED], Pastor of Iglesia Evengelia del Nuevo Nacimiento in Los Angeles, California;
7. an affidavit dated August 20, 1993 from [REDACTED] stating that he met the applicant in 1990; and,
7. photocopies of various receipts dated between April 14, 1982 and April 27, 1988.

The applicant has submitted evidence reflecting continuous residence in the United States from 1983 to May 4, 1988, the filing date of his application; however, he has submitted only affidavits to establish his entry into the United States prior to January 1, 1982 and his continuous residence in the United States from that date to April 14, 1982. [REDACTED] (No. 2 above) attested to the applicant's residence in Los Angeles, California, since March 1982, but failed to provide the applicant's address(es) in the United States during the period of their acquaintance. [REDACTED] (No. 4 above) and [REDACTED] (No. 5 above) list the applicant's address as of the date of their attestations, but neither affiant provided the applicant's address(es) throughout the period of their acquaintance.

These three affidavits lack sufficient specific information to establish the applicant's entry into the United States prior to January 1, 1982 and his continuous residence in the United States from January 1, 1982 to April 1982.

Additionally, the record reveals that officers of the Immigration and Naturalization Service, now Immigration and Customs Enforcement, apprehended the applicant in Chicago, Illinois, on September 7, 1983. He told the officers that he last entered the United States without inspection on or about July 1, 1983, near the Nogales, Arizona, port of entry. The applicant withdrew his application for admission to the United States in lieu of institution of removal proceedings and returned voluntarily to Guatemala on September 13, 1983. It is noted that the applicant did not tell the apprehending officers that he had lived in the United States since 1978 and returned to the United States on or about July 1, 1983, in order to resume his unlawful residence in this country. Furthermore, the applicant did not list his absence outside the United States at Item 35 on the Form I-687, "Absences Outside the United States."

The record contains no information regarding the applicant's date of departure from the United States, how long he was outside the United States, and no evidence other than the applicant's statement to the apprehending officers to establish his claim that he returned to the United States on or about July 1, 1983. Furthermore, the record contains no information concerning the length of the applicant's absence outside the United States following his voluntary return to Guatemala on September 13, 1983, or when he re-entered the United States after his voluntary return to Guatemala.

The applicant has not submitted sufficient credible evidence to establish his continuous residence in the United States throughout the requisite periods. Therefore, the application must be denied for this reason.

The next issue to be examined in this proceeding is whether the applicant has submitted proof of financial responsibility.

An applicant for temporary resident status must present documents establishing proof of identity, proof of residence, and proof of financial responsibility, as well as photographs, a completed Fingerprint Card (Form FD-258), and a fully completed Form I-693 report of medical examination. *See* 8 C.F.R. § 245a.2(d).

The applicant submitted with his application an employment letter dated August 9, 1987, from [REDACTED] stating that the applicant first worked for him as a mason's helper in Los Angeles, California, in August 1983.

Furthermore, as previously stated, the applicant was apprehended by immigration officers in Chicago, Illinois, on September 7, 1983, at which time he was seeking employment. This statement contradicts the employment letter from [REDACTED] stating that the applicant first worked for him in Los Angeles, California, as a mason's helper in August 1983. If the applicant was working for [REDACTED] in Los Angeles, California, in August 1983, it is not clear why the applicant would be apprehended in Chicago, Illinois, on September 7, 1983, just one month later, seeking employment in that city. The applicant did not list any addresses in Chicago, Illinois, on his application. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, it is incumbent on the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

The applicant has not provided sufficient credible proof of financial responsibility. Therefore, the application also must be denied for this reason.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial.

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