

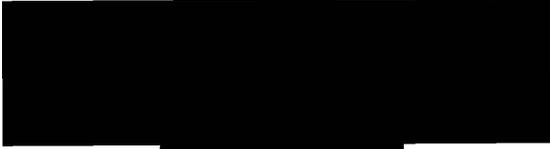
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **FEB 07 2008**
XID-88-173-03105

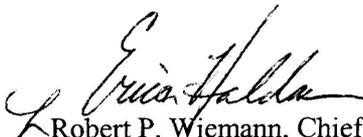
IN RE: Applicant: [REDACTED]

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. The file has 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: The application for temporary resident status was initially denied by the director, Western Service Center, on November 12, 1991. The applicant appealed the decision. The director, Western Service Center, reopened the decision *sua sponte*. On June 14, 2002, the application was denied by the Acting Director, California Service Center. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant submitted a Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (Act). The director determined that the applicant had not established by a preponderance of the evidence that she had continuously resided in the United States in an unlawful status for the duration of the requisite period. The director denied the application, finding that the applicant had not met her burden of proof and was, therefore, not eligible to adjust to temporary resident status.

On appeal, the applicant provided information regarding the grounds for denial in the initial decision. On August 8, 2007, the AAO issued a copy of the June 14, 2002 decision to the applicant and provided the applicant with 30 days to submit additional documentation in support of her appeal. As more than five months have passed and the applicant has failed to submit additional documentation, the record will be considered complete.

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). The applicant must also establish that he or she has been continuously physically present in the United States since November 6, 1986. Section 245A(a)(3) of the Act, 8 U.S.C. § 1255a(a)(3). The regulations clarify that the applicant must have been physically present in the United States from November 6, 1986 until the date of filing the application. 8 C.F.R. § 245a.2(b)(1).

The applicant has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite period, 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. 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 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.* at 80. 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, 431 (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 issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that she resided in the United States for the duration of the requisite period. Here, the submitted evidence is not relevant, probative, and credible.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on April 30, 1988. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant showed her only address to be [REDACTED] from 1980 to present.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant multiple documents indicating her children were born in the United States. These included Certificates of Live Birth from the State of California for the following individuals, listing the applicant as each child’s mother: [REDACTED] born in Los Angeles on [REDACTED]

[REDACTED] born in Los Angeles on [REDACTED]
born in Los Angeles on [REDACTED] born in Los Angeles on [REDACTED]

These documents tend to show the applicant was present in the United States during the few weeks surrounding [REDACTED] and [REDACTED]

The applicant also provided a certificate of baptism indicating the applicant’s daughter, [REDACTED] was baptized in Los Angeles on July 23, 1988. This document tends to show the applicant was present in the United States on July 23, 1988.

The applicant submitted a copy of a card from LAC-USC Women’s Hospital containing the statement, “I’m a BOY!” The card lists the applicant’s last name on the line labeled “baby” and lists the applicant’s first name on the line labeled “mother.” The baby’s date of birth is listed as October 8, 1986. This document also tends to show that the applicant was present in the United States during the few weeks surrounding October 8, 1986.

In denying the application the director noted the applicant had not established by a preponderance of the evidence that she had continuously resided in the United States in an unlawful status for the duration of the requisite period.

In summary, the applicant has provided contemporaneous evidence of presence in the United States for isolated periods in 1976, 1984, 1985, 1986, 1987 and 1988. However, the applicant has provided no evidence of residence in the United States from January 1, 1982 until 1984. In addition, the applicant provided no attestations or other documentation indicating her residence in the United States between 1984 and 1988 was continuous.

The absence of sufficiently detailed supporting documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of this claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the applicant's lack of evidence indicating she resided in the United States continuously from before January 1, 1982 until the date she attempted to file for temporary resident status, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States for the requisite period under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M--*, *supra*. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

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