



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearing unwarranted
invasion of personal privacy

PUBLIC COPY

L1

[REDACTED]

FILE: [REDACTED]
XTU-87-061-02011

Office: CALIFORNIA SERVICE CENTER

Date: JUL 01 2008

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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for Temporary Resident Status pursuant to section 245A of the Immigration and Nationality Act (Act) was denied by the Director, Western Regional Processing Facility, Laguna Niguel, California. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant submitted a Form I-687, Application for Status as a Temporary Resident under section 245A of the Act. The director determined that there was insufficient evidence in the record to establish that the applicant had maintained residence in the United States during the requisite period.

On appeal, the applicant stated that she believes she provided sufficient evidence to establish her continuous residence in the United States. The applicant expressed her hope that the letters she submitted be considered.

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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his or her burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has met this burden.

The record shows that the applicant submitted a Form I-687 application to the Immigration and Naturalization Service (INS), currently Citizenship and Immigration Services (CIS), on July 31, 1987. At part #33 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 in the United States during the requisite period to be: [REDACTED], Tucson, Arizona from November 1980 to present. At part #34 where the applicant was asked to list all affiliations or associations with clubs, organizations, churches, unions, businesses, et cetera, the applicant listed only the San Antonio Catholic Church in South Tucson from November 1980 to present. At part #35 where the applicant was asked to list all of her absences from the United States, she listed only the following trips to Mexico: A trip for her Border Crossing Card during October 1981, a two-day trip due to an illness in the family during February 1984, a two-day trip for Mother’s Day celebrations during May 1985, a two-week trip for her mother’s operation during October 1986, and a trip for her uncle’s funeral in November 1986. At part #36 where applicants were asked to list all employment in the United States since first entry, the applicant listed only the following positions: Housekeeping and babysitting for [REDACTED] from 1980 to 1982; housekeeping for the Sheraton El Conquistador from March 1985 to May 1985; housekeeping, general chores, and babysitting for [REDACTED] from October 1985 to June 1987; housekeeping and general chores for [REDACTED] and [REDACTED] from 1980 to present; and housekeeping and general chores for [REDACTED] from November 1980 to present.

The applicant has the burden of proving by a preponderance of the evidence that she has resided in the United States for the requisite period. 8 C.F.R. § 245a.2(d)(5). To meet her burden of proof, an applicant must provide evidence of eligibility apart from her own testimony. 8 C.F.R. § 245a.2(d)(6). **The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that an applicant may submit to establish proof of continuous residence in the United States during the requisite period. This list includes: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books;**

letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts or letters. An applicant may also submit any other relevant document pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The applicant submitted numerous documents in support of her application that are relevant to the requisite period. These include pay stubs; a work schedule listing the applicant's name; and twelve affidavits from friends, relatives and neighbors. The affidavits are sufficiently detailed and generally consistent with each other and with the other evidence in the record.

The director denied the application on October 11, 1988. In doing so, he stated that there was insufficient evidence in the record to establish that the applicant had maintained residence in the United States during the requisite period. The director stated that five of the affidavits submitted by the applicant were notarized by the applicant's cousin, [REDACTED], and are not notarized with an official seal. Therefore, the director found that the affidavits lacked credibility. The record indicates that the affidavits notarized by [REDACTED] do contain a stamp stating "Official Seal," and listing the notary's name and commission expiration date. Therefore, the director's finding that these affidavits lack credibility is withdrawn.

On appeal, the applicant stated that she believes she provided sufficient evidence to establish her continuous residence in the United States. The applicant expressed her hope that the letters she submitted be considered.

The contemporaneous documents presented by the applicant appear to be credible. The affidavits submitted by the applicant appear to be credible and amenable to verification in that each includes a contact address. There are inconsistencies between some of the affidavits and the applicant's statements regarding her absences from the United States. However, the applicant indicated that she was absent from the United States for approximately three weeks during the requisite period and the affiants all indicated that the applicant was absent for fifteen days or not at all during the requisite period. These inconsistencies are minor, considering that all the affiants explained their relationship to the affiant, provided her address, and indicated that they had consistent contact with her throughout the requisite period.

Beyond the issues already raised, the director has not established: that the information on the supporting documents in the record was inconsistent with the applicant's testimony; that any major inconsistencies exist *within* the claims made on the supporting documents; or that the documents contain false information. As stated in *Matter of E-M-*, 20 I&N Dec. at 80, when something is to be established by a preponderance of the evidence, the proof submitted by the applicant has to establish only that the asserted claim is probably true. That decision also states that, under the preponderance of evidence standard, an application may be granted even though some doubt remains regarding the evidence. *Id.* at 79. The documents that have been furnished in this case 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 provided evidence that establishes by a preponderance of the evidence that she entered the United States before January 1, 1982 and she maintained continuous, unlawful residence from such date through the date that she filed the Form I-687. Consequently, the applicant has overcome the particular basis of denial cited by the director.

ORDER: The applicant's appeal will be sustained. The director shall continue the adjudication of the application for Temporary Resident Status.