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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED]  
MSC 02 318 60021

Office: DALLAS

Date: **MAY 12 2008**

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Temporary Resident Status under 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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits [or Records] 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.

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

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application for temporary resident status was denied by the District Director, Dallas. On appeal, the Administrative Appeals Office (AAO) remanded the case for further action. The matter is now before the AAO upon certification of the director's subsequent, adverse decision. The director's decision will be affirmed. The application will be denied.

The director determined that the applicant had not established by a preponderance of the evidence that he continuously resided in the United States in an unlawful status for the duration of the requisite period. The director denied the application as the applicant had not met his burden of proof and was, therefore, not eligible to adjust to temporary resident status.

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 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. 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 regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he continuously resided in the United States in an unlawful status for the duration of the requisite period. Here, the applicant failed to meet his burden.

In a November 16, 2007, Notice of Intent to Deny (NOID), the director stated that the applicant failed to submit sufficient credible evidence to establish his continuous unlawful residence from his claimed date of entry through May 4, 1988. The director granted the applicant thirty (30) days to submit additional evidence. The record reflects that no evidence was received. In a January 14, 2008, Notice of Decision (NOD), the director denied the application based on the reasons stated in the NOID. The NOD was certified to the AAO for review.

The record contains a Form for Determination of Class Membership in *CSS v. Meese* or *LULAC*, signed by the applicant on May 4, 1990. The applicant stated that he first entered the United States on February 1981. However, to meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. 8 C.F.R. § 245a.2(d)(6). In support of his claimed date of entry and continuous unlawful residence during the requisite period, the applicant submitted the following relevant evidence:

1. An April 27, 1990, sworn affidavit by [REDACTED], who stated that he has known the applicant since 1987 to the present, and sees him approximately once a week. The affiant stated that the applicant lives with his uncle, [REDACTED]. The affiant provided his mailing address. Although not required, the affidavit failed to include any supporting documentation of the affiant's presence in the United States during the requisite period. The affiant failed to indicate how he dated his acquaintance with the applicant or how he met the applicant. The affiant also failed to list the applicant's place of residence during the requisite period. The lack of details detracts from the credibility of the affiant.
2. An April 27, 1990, sworn affidavit by [REDACTED] who stated that he has known the applicant since about 1983. The affiant stated that the applicant worked for him putting water lines in for the city. The affiant provided his mailing address. The affiant failed to provide the applicant's address at the time of employment, identify the exact

period of employment, state the applicant's duties, declare whether the information was taken from company records, and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable as required under the regulation at 8 C.F.R. § 245a.2(d)(3)(i). The lack of details detracts from the credibility of the affiant.

3. An April 25, 1990, sworn affidavit by [REDACTED] who stated that he hired the applicant to work for his rock business in January 1982. The affiant stated that the applicant's duties were cutting, hauling rocks, and balling trees. The affiant stated that he provided room and board and a salary of about \$25 per day. The affiant stated that the applicant returned to work for him in January of 1986. The affiant provided his mailing address. The affiant failed to identify the exact period of employment, declare whether the information was taken from company records, and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable as required under the regulation at 8 C.F.R. § 245a.2(d)(3)(i). The lack of details detracts from the credibility of the affiant.
4. An April 8, 2003, sworn affidavit by [REDACTED], who stated that the applicant worked for him on his farm from December 15, 1982, through June 1, 1988. The affiant stated that he paid the applicant \$200 per month in cash and provided the applicant room and board. The affiant stated that the applicant's duties included helping the affiant with his livestock, hogs, cattle, and yard work. The affiant stated that he kept yearly records of the applicant as it was too much trouble to give monthly receipts. The affiant provided his mailing address and telephone number. The record includes original receipts from [REDACTED] paid to the applicant for contract labor, dated from December 15, 1982 through 1988. However, it is noted that the receipts contain several discrepancies. The receipt numbers are not dated in chronological order. Receipt number [REDACTED] is dated December 20, 1987 to June 1, 1988. Receipt number [REDACTED] is dated December 19, 1986 to December 19, 1987. Receipt number [REDACTED] is dated December 18, 1985 to December 18, 1986. There is no explanation to reconcile this discrepancy. This discrepancy brings into question the credibility of the affiant.
5. A June 16, 2003, sworn affidavit by [REDACTED], who stated that he has known and been acquainted with the applicant since 1982. The affiant stated that he met the applicant when they both worked for the same company. The affiant failed to state the name of the company. The affiant provided his mailing address. Although not required, the affidavit failed to include any supporting documentation of the affiant's presence in the United States during the requisite period. The affiant also failed to list the applicant's place of residence during the requisite period. The affidavit provides limited probative value.

6. A June 19, 2003, sworn affidavit by [REDACTED] who stated that he has known and been acquainted with the applicant since 1981. The affiant stated that the applicant assisted him with his agricultural business by maintaining fences and caring for livestock. The affiant provided his mailing address. Although not required, the affidavit failed to include any supporting documentation of the affiant's presence in the United States during the requisite period. The affiant also failed to list the applicant's place of residence during the requisite period and the exact dates of employment. The affidavit provides limited probative value.
7. A June 16, 2003, sworn affidavit by [REDACTED]s, who stated that he has known and been acquainted with the applicant since 1983. The affiant stated that he met the applicant as a neighbor and then the applicant worked for him for five months. The affiant provided his address of residence. Although not required, the affidavit failed to include any supporting documentation of the affiant's presence in the United States during the requisite period. The affiant also failed to list the applicant's place of residence during the requisite period. The affidavit provides limited probative value.
8. A June 20, 2003, sworn affidavit by [REDACTED], who stated that she has known and been acquainted with the applicant since 1982. The affiant stated that the applicant assisted her over the years by maintaining fences and caring for livestock. The affiant provided her mailing address. Although not required, the affidavit failed to include any supporting documentation of the affiant's presence in the United States during the requisite period. The affiant failed to indicate how frequently she saw the applicant. The affiant also failed to list the applicant's place of residence during the requisite period. The affidavit provides limited probative value.

Although the applicant has submitted numerous affidavits in support of his application, the applicant has not provided sufficient evidence of entry into the United States prior to January 1, 1982, and continuous unlawful residence in the United States during the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of his claim. Pursuant to 8 C.F.R. § 245a.12(e), 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 reliance upon documents with discrepancies and limited 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 the duration of the requisite period.

Therefore, based on the above, the applicant has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the duration of the requisite period as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M--*, *supra*. Accordingly, the applicant is ineligible for temporary resident status under section 245A of the Act.

**ORDER:** The director's decision will be affirmed. The application will be denied. This decision constitutes a final notice of ineligibility.