U.S. Department of Homeland Security
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Washington, D.C. 20529-2090

U.S. Citizenship and Immigration Services

PUBLIC COPY

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FILE: [redacted] Office: TEXAS SERVICE CENTER Date: DEC 16 2008

XDA-88-001-4045

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.

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application for temporary resident status pursuant to the Immigration and Nationality Act (Act) § 245A, was denied by the Director of what was formerly known as the Southern Service Center and what is now known as the Texas Service Center in Dallas, Texas. 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) in May of 1988, during the original legalization filing period. The record shows that the applicant failed to appear for his second scheduled interview in October of 1988. However, because the office determined that the applicant did not receive one or more interview notices, it scheduled at least one additional interview for him in November of 1990 and sent it to his address of record. However, the applicant also failed to appear for this interview. Because the applicant failed to appear for his scheduled interview appointments and also because he failed to submit sufficient evidence in support of his application, the director denied the application, finding that the applicant had not established by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status for the duration of the requisite period.

On appeal, the applicant states that though he missed his October 1988 interview appointment, he would like his case to be reconsidered.

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).

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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

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. *See* 8 C.F.R. § 245a.2(d)(6). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

Even if the director has some doubt as to the truth, if the applicant 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.

It is noted that in October of 1991, January 1992 and November 1992 the applicant submitted letters to the former Immigration and Naturalization Service (INS), now known as United States Citizenship and Immigration Services (USCIS). Collectively, these letters state that though the applicant missed his October 1988 interview appointment, he would like to proceed with his case. The applicant also provides an updated address in each letter and requests an update on the status of his case. The record contains several returned envelopes that indicate that letters from the former INS were returned because the addressee, the applicant, was unknown at the addresses provided.

The record shows that the director re-issued his decision multiple times, the last of which was on December 8, 1992. In his decision, as was previously noted, the director stated that both because the applicant failed to appear for his interview and because he failed to submit any evidence in support of his application, the applicant failed to satisfy his burden of proof.

The issue in this proceeding is whether the applicant has established that he (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. In this case, the applicant did not submit any

evidence in support of his claim that he arrived in the United States before January 1982 and lived in an unlawful status during the requisite period.

The record indicates that the applicant failed to appear for an October 1988 interview regarding his Form I-687. This interview is required by the regulation at 8 C.F.R. § 245a.2(j). The record indicates that INS rescheduled interviews for the applicant two additional times, but it is not clear whether the applicant received these additional notices, as there are multiple envelopes in the record from the former INS that were returned as undeliverable. It is noted that the record does not contain any Forms AR-11, Alien Change of Address Forms[1] from the applicant. The applicant is required by Section 265 of the Act , 8 U.S.C. § 1305 to inform USCIS of any changes of address within ten days of such a change. In this case, it does not appear that the applicant did so.

In addition, as was previously noted, to meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. In this case, because the applicant failed to submit any evidence that he is eligible to adjust to temporary resident status apart from his Form I-687 application, he has not met his burden of proof. The applicant was informed of this deficiency by the director in his decision, yet he did not submit additional evidence for consideration on appeal.

Therefore, upon a *de novo* review of the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that he is eligible for the benefit sought.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and continuously resided in an unlawful status in the United States for the requisite period as required 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.

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[1] Section 265 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1305 states that all applicants within the United States shall notify the Attorney General in writing of each change of address and new address within ten days from the date of such change ... This section of the Act was amended by Section 11 of the Act on December 29, 1981, Pub. L. No. 97-116, 95 Stat. 1161.