U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship
and Immigration
Services

L1

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: JUN 30 2008

XSA 87 103 4068

IN RE: Applicant: [redacted]

PETITION: 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. If your appeal was dismissed or rejected, all documents have been returned to the National 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Western Regional Processing Facility, denied the instant application for temporary resident status. The Administrative Appeals Office (AAO) remanded the matter, and it is again before the AAO. The AAO will reopen the matter *sua sponte*. The appeal will be dismissed.

The district director determined that the applicant had failed to submit sufficient evidence to demonstrate that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that he attempted to file a Form I-687, Application for Status as a Temporary Resident, with the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS) in the legalization application period between May 5, 1987 to May 4, 1988.

On appeal, the applicant reiterated his claim of residence in this country for the requisite period and states that he submitted sufficient evidence to support that claim. With his appeal, the applicant submitted additional documentation in support of his appeal, although it was not directly relevant to the basis for denial.

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. Section 245A(a)(2) of the Immigration and Nationality Act (Act), 8 U.S.C. § 1255a(a)(2) and 8 C.F.R. § 245a.2(b).

As to the requirement of continuous residence in the United States from January 1, 1982 through the date the application is filed, the regulation at 8 C.F.R. § 245a.2(h)(1) provides that an applicant shall be regarded as having resided continuously if no single absence during the salient period was longer than 45 days and the aggregate of all absences does not exceed 180 days.

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. 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 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, 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.

On the Form I-687 application, which he signed on September 10, 1987, the applicant stated, at item 4, that he had used the name [redacted] in addition to his own name, and, at item 19, that he had used the social security numbers [redacted] and [redacted]. The applicant also stated, at item 35, that he had been absent from the United States from August 1985 through May 1986 attending to a family emergency in Mexico. The applicant further stated, at item 16, that he last entered the United States on January 13, 1986. The statement that he last entered the United States on January 13, 1986 conflicts, of course, with the statement that he was absent from August 1986 to May 1986.

At item 33, where the applicant was required to list all of his residences in the United States since his initial entry, the applicant stated that he had lived (1) at 807 N. Minter in Santa Ana, California from January 1980 to July 1983; (2) at [redacted] in Santa Ana from August 1983 to August 1985; (3) at [redacted] in Santa Ana from January 1986 to April 1987; and (4) at [redacted] in Santa Ana from May 1987 through the date of that application. This office notes that the applicant's failure to list an address in the United States from September 1985 to January of 1986 is consistent with the applicant's assertion, at item 35, that he was absent from the United States from August 1985 through May 1986, as well as with his statement that he last entered the United States on January 13, 1986.

At item 36, where the applicant was required to list all of his employment in the United States since his initial entry, the applicant stated that he worked (1) for Bristol Fiberlite Industries as an assembler from September 1980 through August 1985; and (2) for [redacted] in construction from October 1986 through the date of that application. This office notes that the applicant's failure to list any employment from August 1985 through October 1986 is consistent

with his assertion, at item 35, that he was absent from the United States from August 1985 through May 1986, as well as with his statement that he last entered the United States on January 13, 1986.

The evidence in the record is described below.

- The record contains an employment verification letter, dated July 24, 1987, from [redacted] of Orange, California. That letter indicates that the applicant began working for that company on October 8, 1986 and indicates that he continued to work for that company as a construction laborer on the date of the letter. Photocopies of the applicant's 1986 personal income tax return and a 1986 Form W-2 Wage and Tax Statement accompanying that letter confirm the employment claim.

  Again, employment verification letters are required, consistent with 8 C.F.R. § 245a.2(d)(3)(i), to declare whether the information provided was taken from company records; identify the location of such company records and state that such records are available for inspection, or, in the alternative, explain why such records are unavailable. The employment verification letter from [redacted] does not comply with that regulatory requirement. Pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L), the employment verification letter will be considered, but it will be accorded less weight than if it complied with the salient regulation.

- The record contains the applicant's 1983 Federal income tax return. The applicant declared Line 12 total wages of $10,741 during that year. That document will be accorded moderate evidentiary value for the proposition that the applicant was in the United States during some portion of 1983, though not necessarily for all of it.

- The record contains a 1983 W-2 form that may have been issued by some company to the applicant, under one name or another, but is illegible. That W-2 form will be accorded no evidentiary value.

- The record contains two pages of a 1986 tax return filled out by the applicant. That document shows that the applicant declared Line 6 total income of $3,545 during that year. That document will be accorded moderate evidentiary value for the proposition that the applicant was in the United States during some portion of 1986, though not necessarily for all of it.

- The record contains a 1986 W-2 form issued to the applicant by [redacted]. showing that it paid him $3,544.80 during that year. This appears to show that the Wolfe Company was the only source of the applicant's taxed income during that year. That document will be accorded strong evidentiary value for the proposition that the applicant was in the United States during some portion of 1986, though not necessarily for all of it.

- The record contains the stub of a money order issued to the applicant, dated January 26, 1985, and showing that he then lived at [redacted] in Santa Ana. That document will be accorded moderate evidentiary value for the proposition that the applicant was in the United States on that date.

- The record contains a notice to the applicant, dated September 26, 1985, from the California Department of Motor Vehicles noting that he was obliged to obtain a smog certificate for an automobile. That the notice was mailed on that date does not demonstrate that the applicant was in the United States on that date, but is strong evidence that he previously owned an automobile registered in California.

- The record contains an interim driver's license issued to the applicant by the California Department of Motor Vehicles on July 14, 1983. That document is convincing evidence that the applicant was in the United States shortly prior to that date. That document, however, was mailed to the applicant at [redacted] in Santa Ana on July 14, 1983. The applicant stated, on the Form I-687, that he lived at [redacted] on that date, and did not begin living at the [redacted] address until August of 1983. Nevertheless, that document will be accorded strong evidentiary value for the proposition that the applicant resided in the United States at some time during 1983 prior to July 14.

- The record contains a form affidavit dated August 18, 1987 from [redacted] of Santa Ana, California. The affiant stated that she has known the applicant since childhood, without otherwise describing their relationship or how they met, and that she knows that the applicant has resided in the Santa Ana, California from June 1982 through the date of that affidavit. The affiant stated that the longest period of time during the attested period of residence during which she had not seen the applicant was zero years and zero months.

- The record contains a Form I-130 Petition for Alien Relative in which [redacted] petitioned for the applicant as her brother. The relationship between [redacted] and [redacted], the previously mentioned affiant, if any, is unknown to this office. The similarity in names, however, raises the issue of a possible undisclosed family relationship between the applicant and the affiant, [redacted], and therefore to the applicant, brother of [redacted]. For this reason the affidavit of [redacted] will be accorded very little evidentiary weight.

- The record contains a copy of the applicant's California driver's record. That record shows that the applicant was mailed a California Identity Card on May 12, 1982. That document is strong evidence in support of the proposition that the applicant applied for that card, and was in the United States, shortly before that date.

- The record contains an employment verification letter, dated July 27, 1987 from Bristol Fiberlite Industries of Santa Ana, California. That letter is on company letterhead and is

signed by [redacted] as Chairman of the Board. That letter states that [redacted], of social security number [redacted], worked for that company from September 20, 1980 to August 26, 1985.

As was noted above, the regulation at 8 C.F.R. § 245a.2(d)(3)(i) requires that employment verification letters must provide the applicant's address at the time of employment. The employment verification letter from Bristol Fiberlite gives the applicant's address as [redacted] in Santa Ana, California. On the Form I-687 application, the applicant stated that he began living at that address during May 1987. Either it misstated the applicant's address at the time of the employment or was merely stating the applicant's then present address, which would not be in compliance with the salient regulation.

Further, consistent with that regulation, employment verification letters must declare whether the information provided was taken from company records; identify the location of such company records and state that such records are available for inspection, or, in the alternative, explain why such records are unavailable. The employment verification letter from Bristol Fiberlite Industries does not comply with that regulatory requirement. Pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L), the employment verification letter will be considered, but it will be accorded less weight than if it complied with the salient regulation.

- The record contains 1980, 1981, 1982, 1983, 1984, and 1985 W-2 forms issued to [redacted] by Bristol Fiberlite Industries. The 1984 W-2 form shows that, at the end of that year, the applicant lived at [redacted], although the applicant stated, on the Form I-687 application, that he moved from [redacted] to [redacted] in August 1983.

- The record contains a photocopied portion of a notice issued by the IRS and dated December 23, 1985. That notice reports an unspecified problem with a name and the social security number [redacted] The small portion of the addressee's name and address shown on the portion of the notice provided are consistent with it having been sent to [redacted], a name the applicant claims to have worked under, at [redacted] in Santa Ana, California, an address at which the applicant claims to have lived. The portion of that notice that was provided, however, is insufficient to demonstrate that the notice was, in fact, sent to that name and address.

- The record contains a receipt for a money order issued to [redacted], of [redacted] in Santa Ana, California, on an illegible date during 1982. This office notes that the applicant did not claim to live at [redacted] at any time during 1982 or at any other time during the period of requisite residence.

- The record contains receipts for money orders purchased June 6, 1983, August 31, 1983, November 30, 1983, January 3, 1984, March 5, 1984, and April 30, 1984, and issued to [redacted]. This office notes that all of those receipts, including the receipt for the

money order purchased June 6, 1983, give [redacted]' address as [redacted] in Santa Ana, although the applicant stated, on the Form I-687, that he did not move to that address until August of 1983.

- The record contains a receipt, dated June 5, 1982, for payment by for medical services at a clinic in Santa Ana, California.

- The record contains a coupon from a payment book issued to [redacted] of [redacted] in Santa Ana, California, showing a payment due on December 1, 1982. The applicant indicated, on the Form I-687 application, that he never lived at that address.

- The record contains an invoice and a receipt for medical labwork, dated June 5, 1982, issued to [redacted] of [redacted] in Santa Ana, California. The applicant has indicated that his address at that time was [redacted]

- The record contains a form affidavit dated August 19, 1987 from [redacted] of Santa Ana, California. That affidavit states that the applicant resided in Santa Ana from December 1979 to the date of that affidavit, but without providing any additional detail about his residential history. The affiant stated, "I know the applicant by [redacted] and by his real name [redacted]. We are very good friends as well." The affiant stated that the longest period during the attested period of residence during which she had not seen the applicant was zero years and zero months. Although a photograph was attached to that affidavit, the affiant did not acknowledge that it was there when he signed it or otherwise indicate that the photograph depicts the person he knew as [redacted]

The regulation at 8 C.F.R. § 245a.2(d)(2) states,

> *Assumed names*—(i) *General*. In cases where an applicant claims to have met any of the eligibility criteria under an assumed name, the applicant has the burden of proving that the applicant was in fact the person who used that name. The applicant's true identity is established pursuant to the requirements of paragraph (d)(1) of this section. The assumed name must appear in the documentation provided by the applicant to establish eligibility. To meet the requirements of this paragraph documentation must be submitted to prove the common identity, i.e., that the assumed name was in fact used by the applicant.
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> (ii) *Proof of common identity*. The most persuasive evidence is a document issued in the assumed name which identities the applicant by photograph, fingerprint or detailed physical description. Other evidence which will be considered are affidavit(s) by a person or persons other than the applicant, made under oath, which identify the affiant by name and address, state the affiant's relationship to the applicant and the basis of the affiant's knowledge of the applicant's use of the assumed name. Affidavits accompanied by a photograph which has been

identified by the affiant as the individual known to affiant under the assumed name in question will carry greater weight.

The applicant has submitted various documents bearing the name [redacted]. However, the only evidence in the record, other than the applicant's own statement, that the applicant used that name is the August 19, 1987 affidavit of [redacted]. That document does not state the applicant's address, as required of common identity affidavits by 8 C.F.R. § 245a.2(d)(2). Although the affidavit was accompanied by a photograph, the affiant did not state that it was a photograph of the person he knew as [redacted]. Although the affiant stated that he was a friend of [redacted], whom he also knew by the applicant's true name, he did not otherwise describe the basis of his knowledge that the applicant used that name in his employment or in any other context. That affidavit will be accorded no weight for the proposition that the applicant was known as [redacted], and no weight for the proposition that the applicant was in the United States since December 1979.

The file, therefore, contains no credible evidence for the proposition that the applicant worked under the name [redacted]. Further, various items in the record purport to show that although the applicant and [redacted] have shared the same address at times, they have also lived separately at other times. Because the record contains no evidence that the applicant and [redacted] are the same person, and contains evidence that they are not, in fact, the same person, this office finds that the applicant has failed to demonstrate that he worked under the name [redacted], or that any of the evidence in the record that pertains to [redacted] also pertains to the applicant. The evidence pertinent to [redacted] will not be further addressed.

On April 4, 1988 the Director, Western Regional Processing Facility issued a request for evidence. The director asked that the applicant provide a detailed explanation of the reasons for his absence from the United States from August 1985 to May 1986, as reported on his Form I-687 application and the exact dates of his departure and return. The applicant did not respond to that request.

On June 16, 1989 the Director, Western Regional Processing Facility, denied the application. The director noted that the applicant stated that he was absent from the United States from August 1985 to May of 1986, that such an absence would exceed the allowable 45 days for a single absence and 180 days in the aggregate, and that the application may not, therefore, be approved.

Subsequently, CIS received a letter from the applicant, dated June 22, 1989, responding to the request for evidence and the decision of denial. In that letter the applicant stated that his Form I-687 application was incorrectly completed. In one portion of that letter the applicant appeared to indicate that he knew that the preparer was stating that the applicant was absent from the United States from August 1985 to January 1986. In another part of the letter he appears to disclaim knowledge of that alleged misstatement on his application. The applicant stated that he was actually absent from the United States from August 30, 1985 to September 20, 1985, and from

December 15, 1985 to January 13, 1986, rather than during the period stated on his Form I-687 application. The applicant added that from January 1986 through October 1986 he worked at temporary jobs and was paid in cash, and is now unable to locate his employers from that era. The applicant also stated that he failed to respond to the April 4, 1988 request because, when he received a letter telling him to pick up his temporary resident card he believed that the matter had been resolved.

On appeal, the applicant reiterated the assertion that his absence from the United States was inadvertently misrepresented on his Form I-687 application.

On February 12, 1993 this office remanded the matter pursuant to a request by the director. The director subsequently returned the matter to the AAO for adjudication of the appeal.

The applicant has submitted evidence sufficient to demonstrate that he was present in the United States shortly before May 12, 1982, during some portion of 1983, during a portion of 1985 that included January 26, and since October 8, 1986. The applicant has not demonstrated that he was in the United States at any other time.

Further, the applicant stated on the Form I-687 application that he was absent from the United States from August 1985 to May 1986, which is not contradicted by any reliable evidence in the record. Two other entries on that application support the proposition that the applicant intended, at that time, to indicate absence during that period. Subsequently, after being informed that such an absence would render his application deniable, the applicant amended his story and pointed out that the Form I-687 also says that he entered the United States on January 13, 1986.

Although the applicant now claims to have been in the United States from September 21, 1985 to December 14, 1985, a period during which he originally indicated that he was absent, he presented no contemporaneous evidence pertaining to that period, even though he provided considerable contemporaneous evidence pertinent to other dates.

Pursuant to 8 C.F.R. § 245a.2(d)(3), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. The applicant has failed to submit sufficient credible documentation to meet his burden of proof in establishing that he has resided in the United States since prior to January 1, 1982 to May 4, 1988 by a preponderance of the evidence as required under both 8 C.F.R. § 245a.2(d)(3) and *Matter of E-M-*, 20 I&N Dec. 77 (Comm. 1989).

Given the applicant's initial statement that he was absent from the country for a period of greater than 45 days at a time, and, in fact, absent for a period of greater than 180 days, which assertion was largely corroborated by the other assertions on the Form I-687 application, this office finds that the applicant's subsequent disclaimer, and the fact that the applicant also stated, on the Form I-687 application, that he entered the United States on January 13, 1986, are insufficient to overcome the finding that the applicant was absent from August 1985 to May 1986. The applicant is ineligible

pursuant to section 245A(a)(2) of the Act and 8 C.F.R. § 245a.2(h)(1). The application was correctly denied on that basis, which has not been overcome on appeal.

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