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

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[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: MAY 22 2008
XTU 87-044-1006

IN RE: Applicant: [redacted]

APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, by the Immigration Reform and Control Act of 1986.

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 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, as amended by the Immigration Reform and Control Act of 1986, was denied by the Director, Western Service Center on July 22, 1988. 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), as amended by the Immigration Reform and Control Act of 1986. The director determined that the applicant had not established by a preponderance of the evidence that he entered the United States prior to January 1, 1982 as Section 245A of the Act requires applicants for adjustment of status to a temporary resident to do. Specifically, the director stated that at the time of the applicant's parent's interview with an Immigration and Naturalization Service (INS) officer on July 17, 1987, the Tucson Legalization Office verified that the applicant first entered the United States on January 10, 1982 when he was less than one month old. Because the applicant entered the United States on January 10, 1982 rather than before January 1, 1982 the director found the applicant was not eligible to adjust status to that of a temporary resident and denied the application.

The applicant submitted an appeal to the director's decision on July 22, 1988. In his appeal, he requested the record of proceedings. He stated in his appeal that he understood that he would have 30 days from his receipt of the record to submit a brief.

The record shows the applicant was supplied with 24 pages of documents as a response to his request for his record of proceedings on April 12, 1989. As of today's date, May 20, 2008, the record shows that no further evidence has been received from this applicant.

On June 10, 1991 the record shows an untranslated letter written in Spanish was received from Juana Loya, the applicant's mother. Though there is no translation of this letter, it is a request for an update on the status of the applicant's case. The applicant's mother states that she would like to know why no decision has been made in her son's case. She expresses concern over the lack of communication regarding her son's case.

The record also contains an approved From I-130 petition for an Alien Relative filed by the applicant's father, who is now a United States Citizen. The record does contain a copy of an approval notice for this petition.

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)(A) of the Act. 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.

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 "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 from a date before January 1, 1982 and then for the duration of the requisite period. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted a Form I-687 application, to INS on July 8, 1987. At part #16 of the Form I-687 application where he was asked when he last entered the United States, he showed he last entered the United States on January 10, 1982. At part #33 of the application where the applicant was asked to list all of his residences since he first entered, he showed that he resided in Borger, Texas from January 1981 until November 1982 and then in Texas and Arizona continuously until he filed his Form I-687. Though it is noted that the applicant showed he began residing in Texas in January 1981, the AAO notes that the applicant was born in December 1981. However, as the applicant's parents have been consistent in saying that the applicant entered the United States on January 10, 1982 elsewhere in the record, it appears that this was an unintentional error. As the applicant, who was born December 11, 1981, was a minor when his parents completed his Form I-687 for him, he did not show he was employed during the requisite period.

The record contains a Form I-293 issued to the applicant on February 11, 1982 when he was two months old. This letter states that the applicant will receive an Order to Show Cause Form I-221 in the future.

The record also contains a Form I-221 Order to Show Cause and Notice of Hearing, issued to the applicant on March 31, 1982. Here, the applicant, who would have been three months old at the time this notice was issued, was ordered to appear for a hearing before an immigration judge on May 20, 1982. This document indicates that the applicant entered the United States on or about February 2, 1982. The record does not show whether the applicant received this notice. Further, the record does not show that further action was taken regarding this order and there are no EOIR records for this applicant.

The record also shows that the applicant's father was asked about this Form I-221 notice at the time of his interview. At that time, the officer found his explanation that he was unaware that there were INS proceedings against any member of his family was reasonable. The record shows that he stated he received an initial I-293 in February 1982 but did not receive any other correspondence from INS after that time.

Also in the record is an affidavit of support submitted by the applicant's father, [redacted] Here, the applicant's father shows he has resided in the United States since 1972. This affidavit certifies that the applicant will not become a public charge in the United States.

Further in the record are the notes from the CIS officer who interviewed the applicant. Here, the officer's notes indicate that the applicant's mother indicated that she went back to Mexico where she gave birth to the applicant on December 11, 1981. She stated that was in Mexico because her father was ill and that she returned to the United States with the applicant on January 10, 1982. Therefore, it appears that while the applicant's mother was pregnant with him in the United States, she left the United States in late 1981 and did not return again until January 10, 1982, 11 days after the applicant would have needed to enter the United States to qualify for this benefit.

Here, the record shows that the applicant's father's A File, [redacted] contains the following as proof that the applicant's family continuously resided in the United States for the duration of the requisite period:

- Proof of employment including pay stubs, W-2 Forms and Tax returns from 1981-1987
- Utility receipts from 1982 until 1985
- Rent receipts from 1983-1987
- Bank records from 1984-1985
- Children's immunization records from 1981-1986

This applicant's record contains the following:

- An immunization record from a clinic in Arizona issued to the applicant. This record is notarized and shows that the applicant visited that clinic in April, May and July of 1983 and was immunized in 1983, 1985 and 1986 against childhood diseases. This record also shows that the Pima County Health Department had records of the applicant's growth from 1983 to 1986.

The director denied the application for temporary residence on July 22, 1988. In denying the application, the director stated that because the applicant testified that he entered the United States on January 10, 1982, he did not establish that he entered the United States prior to January 1, 1982. Therefore, the director determined that the applicant was not eligible to adjust status to that of a temporary resident.

On appeal, the applicant asserts that he would like a copy of the record of proceedings. He goes on to say that he will submit a brief within 30 days of receiving the record of proceedings. The record shows that the record of proceedings was sent to the applicant on April 12, 1989. However, a brief or additional evidence in support of the application was not found in the record.

In summary, the applicant's parents resided in the United States for the duration of the requisite period. The applicant's mother was pregnant with the applicant and resided in the United States prior to January 1, 1982. However, because she traveled to Mexico to attend to her ill father, she gave birth to the applicant in Mexico. The record shows that the applicant entered the United States with his mother on or around February 2, 1982 and the applicant's mother has testified that they actually entered the United States on January 10, 1982.

The applicant's mother has submitted a letter in which she states that the applicant's entire family has legal status in the United States and the record shows that the applicant's mother and father became United States Citizens on September 24, 1996.

In this case, the applicant has met his burden that he resided in the United States for all but 11 days of the requisite period. However, because he did not meet his burden of establishing that he entered the United States on or before January 1, 1982 he is not eligible to adjust status to that of a temporary resident. 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.