



**U.S. Citizenship  
and Immigration  
Services**

41

[REDACTED]

FILE: [REDACTED]  
MSC 05 190 11052

Office: LOS ANGELES

Date: DEC 02 2009

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.

  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The applicant's status as a temporary resident was terminated by the Director, Los Angeles. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

In his decision, the director states that the applicant was granted lawful temporary residence status under section 245A of the Immigration and Nationality Act (Act). On February 20, 2008, the director issued a Notice to Intent to Terminate (NOIT) in accordance with the regulations at 8 C. F. R. § 245a.2(u)(2)(i). The applicant responded to the director's NOIT in a document dated March 6, 2008, wherein the applicant stated that she is eligible for the immigration benefit sought and that she has submitted affidavit's establishing her eligibility. The director determined that the applicant had not overcome the grounds set forth for termination and issued a Notice of Termination (NOT) on May 20, 2008. In the NOT, the director determined that the applicant was ineligible for temporary residence under section 245A of the Act and terminated the applicant's temporary residence. The director specifically noted that the applicant's testimony that she left the United States on one occasion during the requisite period (1985) was inconsistent with departure information listed by her on the Form I-687. The director further noted that information provided by affiants in support of the applicant's claim for benefits about when they first were aware of the applicant's presence in the United States was inconsistent with the applicant's sworn testimony.

Section 245A(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255a(b)(2) states in pertinent part that the Act provides for termination of temporary residence status granted to an alien if it appears to the Attorney General [now Secretary, Department of Homeland Security] that the alien was in fact not eligible for such status, or the alien commits an act that makes the alien inadmissible to the United States as an immigrant, or the alien is convicted of any felony or three or more misdemeanors committed in the United States. *See also* 8 C.F.R. § 245a.4(b)(20)(i)(A).

United States Citizenship and Immigration Services (USCIS) records reveal that the applicant filed a Form I-698, Application to Adjust Status from Temporary to Permanent Resident, on March 26, 2007 after being granted lawful temporary permanent residence under section 245A of the Act. The Form I-698 was rejected because the applicant's temporary resident status was terminated as indicated above.

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 245(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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her 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).

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.

The issue in this proceeding is whether the applicant (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. The record contains the following evidence which is material to the applicant’s claim:

- The applicant provided witness statements from the following individuals in support of her claim: [REDACTED] and [REDACTED]. The statements are general in nature with the witnesses stating that they have knowledge of the applicant’s presence in the United States for all, or a portion of, the requisite period.

As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. The witness statements provided do not provide detailed evidence establishing how the witnesses knew the applicant, the details of their association or relationship, or detailed accounts of an ongoing association establishing a relationship under which the witnesses could be reasonably expected to have personal knowledge of the applicant’s residence, activities and whereabouts during the requisite period covered by the applicant’s Form I-687. To be considered probative, witness statements must do more than simply state that a witness knows an applicant and that the applicant has lived in the United States for a specific time period. The statements must contain sufficient detail, generated by the asserted contact with the applicant, to establish that a relationship does in fact exist, how the relationship was established and sustained, and that the witness does, by virtue of

that relationship, have knowledge of the facts asserted. The witness statements submitted by the applicant, therefore, are not deemed probative and are of little evidentiary value.

It must further be noted that evidence submitted by the applicant is inconsistent with the applicant's personal testimony and other evidence of record.

submitted a statement wherein he stated that he first met the applicant in the United States in May of 1981. stated that he first met the applicant in the United States in March of 1981. stated that she first met the applicant in the United States in April of 1980. stated that she first met the applicant in the United States in March of 1981. All of these statements are inconsistent with the applicant's sworn testimony wherein she stated that she first entered the United States in December of 1981.

As noted above, the applicant provided sworn statements indicating that she first entered the United States in December of 1981. The applicant further testified that she left the United States on one occasion during the requisite period (1985). The Form I-687 signed by the applicant under penalty of perjury on March 21, 2005, states that she left the United States on one occasion during the requisite period, during August of 1987 for a period of one month. The Form I-687 signed by the applicant's mother under penalty of perjury on March 14, 1988, states that the applicant was residing in Mexico at that time.

The inconsistencies noted have not been explained and are material to the applicant's claim because they have a direct bearing on the applicant's activities and whereabouts during the requisite period. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The evidence submitted in support of the applicant's claim lacks credibility, and it cannot be determined from the record where the truth actually lies with regard to the applicant's claim.

- The applicant submitted records from the Santa Ana, California Unified School District indicating that she attended school from January 7, 1985 to April 30, 1985. The applicant's mother filed tax returns during 1982 and 1983 listing the applicant as a dependent thereon. The applicant provided immunization records from the State of California indicating that the applicant was immunized in Orange County, California during 1984. This evidence does not establish the applicant's continuous residence in the United States for the duration of the requisite period.

The only other evidence submitted by the applicant in support of her application is her personal statement. The applicant's statement, however, in the absence of other credible and relevant evidence establishing that she resided in the United States throughout the requisite period, and in consideration of the inconsistencies of record between the applicant's statement and other evidence, will not sustain her claim. As previously noted, in order to meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her 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 absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, and the inconsistencies noted above, seriously detract from the credibility of her claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), 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 minimal probative value, and the inconsistencies noted, it is concluded that the evidence submitted fails to establish continuous residence in an unlawful status in the United States during the requisite period.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that she has 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. Any temporary resident status previously granted to the applicant is terminated.

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