identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship
and Immigration
Services

PUBLIC COPY

L1

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: JUN 10 2009

XLS 88 215 01182

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:

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.

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The application for temporary resident status was terminated by the Director, Texas Service Center. The decision is now before the Administrative Appeals Office 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. The director denied the application because the applicant did not respond to a request for additional evidence in support of his application.

On appeal, the applicant disagrees with the director, outlines the evidence that he has submitted and explains that unfortunately, the employer who he worked for from November to December 1987 passed away in 2001.

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 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).

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 the evidence for relevance, probative value, and credibility, within the context of the totality of the evidence, to determine whether the facts to be proven are probably true.

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 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.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's de novo authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The pertinent evidence in the record is described below.

1. Notarized statements from [redacted] and [redacted] stating they know the applicant has resided in the United States since 1981.

2. An Affidavit of Witness from stating he knows the applicant has resided in the United States since 1981.

3. A notarized statement from who states he knows the applicant has resided in the United States since 1983.

4. An employment verification letter dated August 12, 1989 from [redacted], the owner of Jack's Landscaping & Snow Plowing in Mt. Prospect, Illinois who states the applicant worked for the firm from November 1981 until December 1987.

5. A notarized employment verification letter dated August 24, 1988 from [redacted] of Jack's Landscaping & Snow Plowing in Mt. Prospect, Illinois who states the applicant worked for the firm from 1981 until August 1987.

6. A nonnotarized "Affidavit of Tenancy" from [redacted] who states the applicant resided at [redacted] in West Chicago, Illinois, from 1981 to 1987.

7. A notarized employment verification letter dated April 17, 1988 from [redacted] the Proprietor of Sweet Basil's in Naperville, Illinois who states the applicant worked for the company since September 22, 1987.

The notarized statements and Affidavit of Witness have been reviewed (Items # 1 through # 3 above) in juxtaposition to the other material in the record. These statements are not sufficiently probative to establish the applicant's continuous residence in the United States since before January 1, 1982 through the requisite time period. On his Form I-687, the applicant does not claim that he was employed by Jack's Landscaping & Snow Plowing or Sweet Basil's (Items # 4, # 5 and # 7). Also, the employment verification letters from [redacted] (Item # 4) and [redacted] (Item # 5) indicate different periods of employment. The fact that [redacted] and [redacted] provided different periods of employment by the applicant at their firm casts doubt on the information provided in the Affidavit of Tenancy from [redacted] (Item # 6). Additionally, the employment verification letters (Items # 4, # 5 and # 7) do not provide the applicant's address at the time of employment and identify the location of company records and

state whether such records are accessible or in the alternative state the reason why such records are unavailable as is required of employment letters by 8 C.F.R. § 245a.2(d)(3)(i).

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, the applicant must resolve any inconsistencies in the record with competent, independent, objective evidence. Attempts to explain or reconcile such inconsistencies, absent competent objective evidence sufficient to demonstrate where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). These inconsistencies cast doubt not only on the evidence containing the conflicts, but on all of the applicant's evidence and all of his assertions.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate entry into the United States prior to January 1, 1982, and continuous residence during the requisite period. The applicant's asserted employment on his Form I-687 are accompanied by inconsistent evidence.

The evidence must be evaluated not by the quantity of evidence alone but by its quality. 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 its amenability to verification. Given the absence of credible supporting documentation, the applicant has failed to meet his burden of proof and failed to establish continuous residence in an unlawful status in the United States during the requisite period. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act.

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