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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: LOS ANGELES Date: MAR 20 2009

MSC-05-265-10549

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 termination of the applicant's temporary resident status by the Field Office Director, Los Angeles, is before the Administrative Appeals Office (AAO) on appeal.[1] The appeal will be dismissed.

The director determined the applicant to be ineligible for temporary resident status based on inconsistent documentation in the record of proceedings. Based on this finding, the director terminated the applicant's temporary resident status.

On appeal, counsel asserts that the director lacks jurisdiction and a legal basis to terminate the applicant's temporary residence. Counsel states that section 245A of the Immigration and Nationality Act provides for termination of temporary residence based on newly acquired evidence. Counsel maintains that there is no indication that the director found new information or new evidence regarding the applicant's ineligibility. Counsel asserts that the termination notice refers to new deficiencies that were not cited in the notice of intent to terminate. Counsel contends that the applicant has established by a preponderance of the evidence that he has continuously resided in the United States for the requisite period.

The AAO notes that contrary to counsel's assertions, section 245A of the Immigration and Nationality Act (Act), 8 U.S.C. § 1255a, does not require the termination of temporary resident status to be based on newly acquired evidence. Section 245A(b)(2)(A) of the Act provides that the Attorney General [now the Secretary, Department of Homeland Security], may terminate an alien's temporary resident status if it appears that the alien is in fact not eligible for such status. 8 U.S.C. § 1255a(b)(2)(A). The regulation at 8 C.F.R. § 245a.2(u)(1)(i) delineates the procedural requirements for termination of status. The regulation provides that the alien must be given an opportunity to offer evidence in opposition to the grounds alleged for termination of his or her status. 8 C.F.R. § 245a.2(u)(2). The record reflects that pursuant to this regulation the director issued a notice of intent to terminate to the applicant and afforded him 30 days to submit additional evidence in rebuttal to the proposed grounds for termination. Therefore, the AAO finds that the director complied with the statutory and regulatory requirements for termination of temporary resident status.

The AAO has also considered counsel's assertion that the termination notice refers to new deficiencies that were not cited in the notice of intent to terminate. Counsel asserts that the applicant did not have unequivocal direction to file original documents. Counsel further asserts that the issues raised did not relate to the alteration of documents. However, the notice of intent to terminate specifically states that many of the applicant's documents appear to have the name and/or date altered. Furthermore, the notice requests the applicant to submit all of the original documents used to establish his residence in the United States during the requisite period. Therefore, the AAO finds counsel's assertions to be unfounded since they are not supported by the record.[2] The AAO will now in a *de novo* review issue a

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[1] The Director, National Benefits Center, rejected counsel's appeal as untimely filed pursuant to 8 C.F.R. § 245a.2(p). The AAO finds that this decision is in error and will *sua sponte* reopen the appeal for adjudication on its merits.

[2] Counsel also claims that the director did not evaluate the 83 pages of evidence submitted with the rebuttal. However, the record shows that the applicant's rebuttal only consisted of counsel's brief (four pages) and the applicant's affidavit (one page).

decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the evidence.[3]

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

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[3] 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).

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.

The issue in this proceeding is whether the applicant has overcome the inconsistencies in the record and established his eligibility for temporary resident status. As stated, the applicant must establish 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. The AAO has reviewed the record in its entirety to determine the applicant's eligibility.

The record of proceedings reflects that the applicant submitted a Form I-687, Application for Status as a Temporary Resident, on June 22, 2005. At part 30 of this application, where applicants are asked to list their residences in the United States since first entry, the applicant showed that during the requisite period he resided at [redacted], Los Angeles, California from December 1981 to December 1986 and [redacted], Los Angeles, California from January 1987 to June 1988. At part 33 of the application, where applicants are asked to list their employment in the United States since first entry, the applicant showed that during the requisite period he was employed as a gardener in Los Angeles County with [redacted] from January 1982 to January 1987 and as a laborer with Merchant World Surplus in Vernon, California from February 1987 to May 1989.

The applicant furnished as corroborating evidence of his residence in the United States affidavits from [redacted] and [redacted]. The affiants state that they have known the applicant during the requisite period through their involvement in the Adventist Church of the Seventh Day located in Los Angeles, California. [redacted] states that she first met the applicant on December 28, 1981 and invited him to go to the church with her. [redacted] and [redacted] state that they first met the applicant at the church in December 1981. [redacted] states that he first met the applicant at the church on January 23, 1982. Finally, [redacted] states that she first met the applicant at the church in December 1983. Although the affiants state that they have known the applicant during the requisite period, their statements do not supply enough details to lend credibility to an at least 25-year relationship with the applicant. For instance, the affiants do not indicate how they date their initial meeting with the applicant, how frequently they had contact with the applicant, or how they had personal knowledge of the applicant's presence in the United States. Further, the affiants do not provide information regarding where the applicant lived or was employed during the requisite period. Given these deficiencies, these affidavits have minimal probative value in supporting the applicant's claims that

[4] The record contains two affidavits from [redacted], dated December 22, 1990 and March 16, 2005.

he entered the United States prior to January 1, 1982 and resided in the United States for the entire requisite period.

The applicant also furnished as corroborating evidence affidavits from [redacted] and [redacted] The affiants state that they first met the applicant in January 1982 while they were playing soccer at a park in Los Angeles California. The affiants state that the applicant became a part of the soccer team. Neither of the affidavits provides concrete information, specific to the applicant and generated by the asserted associations with him, which would reflect and corroborate the extent of those associations and demonstrate that they were a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the affidavits. The affiants do not indicate how they date their initial meeting with the applicant, how frequently they had contact with the applicant, or how they had personal knowledge of the applicant's presence in the United States. Further, the affiants do not provide information regarding where the applicant lived or was employed during the requisite period. Therefore, they are also of minimal probative value in supporting the applicant's claim that he resided in the United States for the entire requisite period.

Regarding the applicant's residence during the requisite period, the applicant filed with his initial Form I-687 application (dated October 12, 1990) a fill-in-the-blank form affidavit from [redacted] Ms. [redacted] states that she met the applicant through friends at church. She states that the applicant resided with her and her family at [redacted] in Los Angeles from December 1981 to December 1986. Ms. [redacted] indicates that the applicant paid his share of rent to the apartment manager. The applicant furnished a rental agreement dated December 28, 1981, which provides that he paid $110.25 and [redacted] paid $114.75 to the landlords, [redacted] As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. The AAO finds this affidavit lacks sufficient detail to establish [redacted]' knowledge of the applicant's residence in the United States during the requisite period. [redacted] fails to provide any information on her living arrangement with the applicant, and does not illustrate their relationship. Nor does she provide any details on the applicant's employment or other daily activities. It is reasonable to expect [redacted] to provide this information since she claims to have resided with the applicant for five years. Affidavits must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Since [redacted] statement does not contain such detail, it is of minimal probative value in supporting the applicant's claims that he entered the United States prior to January 1, 1982 and resided in the United States for the entire requisite period.

As evidence of the applicant's employment during the requisite period, he furnished two statements from his employer, [redacted]s. The first statement, dated December 22, 1990, provides that the applicant was a gardener helper at "various sites" from January 15, 1982 to January 31, 1987. The second statement is an affidavit, which provides that [redacted] met the applicant at the Adventist Church of the Seventh Day on January 15, 1982. Mr. [redacted] states that he employed the applicant part-time for three years. He states that the applicant was then employed full-time from 1985 to January 1987. Mr. [redacted] indicates that the applicant was in the occupation of gardening in different locations in Los Angeles. The regulation at 8 C.F.R. § 245a.2(d)(3)(i) provides that letters from employers must include: (A) Alien's address at the time of employment; (B) Exact period employment; (C) Periods of layoff; (D) Duties with the company; (E) Whether or

not the information was taken from official company records; and (F) Where records are located and whether the Service may have access to the records. If the records are unavailable, an affidavit form-letter stating that the alien's employment records are unavailable and why such records are unavailable may be accepted in lieu of subsections (E) and (F).

These statements do not comply with the above cited regulation because they do not: provide the applicant's address(es) at the time of employment; and convey whether the or not the information was taken from official company records. Mr. [redacted] fails to indicate how he dated the applicant's employment with his company. Further, [redacted] does not provide the name and location of his company to verify the credibility of his claims.[5] Given these significant deficiencies, [redacted] statements are of little probative value.

The record contains two letters from [redacted] located in Los Angeles. The first letter, dated December 21, 1990, is signed by an unidentified church pastor and states that the applicant has been a friend of the [redacted] since December 30, 1981. The second letter, dated January 15, 2005, is from [redacted] and states that the applicant has been a member of the church since 1982. The regulation at 8 C.F.R. § 245a.2(d)(3)(v) provides requirements for attestations made on behalf of an applicant by churches, unions, or other organizations. Attestations must: (1) Identify applicant by name; (2) be signed by an official (whose title is shown); (3) show inclusive dates of membership; (4) state the address where applicant resided during membership period; (5) include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; (6) establish how the author knows the applicant; and (7) establish the origin of the information being attested to.

Neither of these letters comply with the above cited regulation because they do not: state the address(es) where the applicant resided during his membership period; establish in detail that the author knows the applicant and has personal knowledge of the applicant's whereabouts during the requisite period; establish the origin of the information being attested to; and indicate that membership records were referenced or otherwise specifically state the origin of the information being attested to. For this reason, the letters are of little probative value.

The record contains color copies of three photographs. The caption under the photographs is written in Spanish without an English translation. Because the applicant failed to submit a certified translation of the statement, the AAO cannot determine whether the evidence supports the applicant's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

The record also contains several rent receipts, numerous retail receipts, two statements from Central Electric, a dental office invoice and a pharmacy prescription. Several of the documents do not bear the applicant's name; therefore they cannot be linked to the applicant. Also, as stated in the notice of intent to terminate, many of these documents appear to have the name and/or date altered. The director requested the applicant to submit the original documentation in the notice of intent to

[5] All documentation submitted will be subject to USCIS verification. 8 C.F.R. § 245a.2(d).

terminate and cited to the applicant's failure to submit the originals as a basis for termination. On appeal, counsel asserts that the applicant did not have unequivocal direction to file original documents in the notice of intent to terminate. However, the applicant has on appeal been given the opportunity to submit the original documents, and has failed to do so. Pursuant to 8 C.F.R. § 103.2(b)(5), USCIS may, at any time, request submission of an original document for review. Failure to submit the requested original document by the deadline may result in denial or revocation of the underlying application. Given the applicant's failure to submit the original documentation, the AAO finds that these documents as a whole are of little probative value.

The remaining evidence in the record consists of the applicant's 1988 Income Tax Return and copies of his earnings and deduction statements from Merchants World Surplus located in Vernon, California. The relevant earnings and deduction statements are dated February 1988 through April 1988. The AAO finds that these documents are probative of the applicant's residence in 1988; however, they do not cover the entire requisite period.

The record reflects that on January 6, 1992, the applicant filed with the former Immigration and Naturalization Service (INS) a Form I-589, Application for Asylum. The applicant signed this application under penalty of perjury, declaring that the information contained in the application is true and correct to the best of his knowledge and belief. The applicant stated on his application that he was born in Guatemala and last arrived in the United States on December 9, 1987. The applicant also stated that he resided in Mexico for more than one year prior to his entry into the United States. The applicant concurrently filed with his asylum application, a signed Form G-325A, Biographic Information Form. The applicant showed on his biographic information form that he is a national of Guatemala and resided in Mexico from 1970 until December 1989. This information directly contradicts the applicant's claims that he was born in Mexico and has continuously resided in the United States during the requisite period. The applicant's Form I-687 application shows that he arrived in the United States in December 1981 and has been absent from the United States on only one occasion: December 9, 1987 to January 1988.

The contradictions are material to the applicant's claim in that they undermine his credibility as well as his continuous residence in the United States during the requisite period. Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Id.*

The director cited to the aforementioned inconsistencies in the notice of intent to terminate the applicant's temporary residence. In rebuttal to the notice, counsel asserted that the applicant was defrauded by a notario who misrepresented the services and applications to be filed. Counsel contended that the applicant did not know that he was filing for asylum and never had the opportunity to review the application. Counsel maintained that the application is not evidence offered by the applicant and cannot be trusted because he did not complete them. Counsel furnished an affidavit from the applicant, which reiterates these claims. In the affidavit, the applicant states

that unknown to him, a notario filed an asylum application with a fraudulent birth certificate stating that he is from Guatemala. He states that he was not aware of the applicant being filed, the content of the application, and did not sign the forms.

The director terminated the applicant's temporary residence on October 6, 2008. In the notice to terminate the applicant's temporary residence, the director determined that the rebuttal did not overcome the basis for termination. The director noted that the applicant's asylum application was signed by him under penalty of perjury on December 28, 1991. The director further noted that the applicant claimed to be using an employment authorization document (employment card) based on his fraudulent asylum application. On appeal, counsel fails to address any of these issues; she instead states that the applicant has acknowledged that his application was improperly filed.

The AAO has fully reviewed the record and considered the applicant's and counsel's statements. The AAO finds that the applicant's assertion that he was not aware the application was being filed and did not sign the forms is not supported by the record. As stated by the director, the record of proceedings shows the applicant's signature on his asylum application and biographic information form. The record also reveals that the applicant has repeatedly filed applications for employment authorization based on his pending asylum application. The applicant indicated on his initial application for employment authorization that he is an "A.B.C. applicant." The term "ABC" refers to Guatemalan and Salvadoran class members of the ABC settlement agreement reached in *American Baptist Churches v. Thornburgh*, 760 F. Supp. 796 (N.D. Cal. 1991). ABC class members are entitled to certain benefits involving protection from deportation, employment authorization, and the adjudication of their asylum application.[6] The record shows that on January 30, 1997, the applicant filed with INS an *American Baptist Churches* change of address form. The record also shows that the applicant filed an application for employment authorization based on his pending asylum application on the following dates: January 16, 1998, January 21, 1999, February 7, 2000, January 5, 2001, January 23, 2002, May 7, 2002, February 28, 2003 and March 19, 2004. For this reason, the applicant's assertion that he was not aware of his asylum application is of little weight.

Accordingly, the AAO finds that the applicant signed his asylum application and biographic information form and is responsible for the contents of those forms. The AAO notes that there is no remedy available for an applicant who assumes the risk of authorizing an unlicensed attorney or unaccredited representative to undertake representations on its behalf. *See* 8 C.F.R. § 292.1. The AAO only considers complaints based upon ineffective assistance against accredited representatives. *Cf. Matter of Compean, Bangaly and J-E-C-, et al.*, 24 I&N Dec. 710 (A.G. 2009)(requiring an appellant to meet certain criteria when filing an appeal based on ineffective assistance of counsel).

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.

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[6] *See American Baptist Churches v. Thornburgh* (ABC) Settlement Agreement notice posted on www.uscis.gov.

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