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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: LOS ANGELES Date: NOV 2 3 2009
SRC 01 202 53420

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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The termination of the applicant's temporary resident status by the Director, Los Angeles is before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant was granted temporary resident status on July 24, 2003 under section 245A of the Immigration and Nationality Act (Act), as amended, 8 U.S.C. § 1255a. However, pursuant to 8 C.F.R. 245a.2(b)(1) states in pertinent part, "the temporary resident status may be terminated upon the occurrence of any of the following: (i) it is determined that the alien was ineligible for temporary residence under section 245A of this Act."

On March 13, 2008, the director issued a Notice of Intent to Terminate (NOIT) the applicant's temporary resident status. The NOIT indicated that the information regarding residence and employment provided by the applicant was insufficient and inconsistent. Furthermore, the director noted that the applicant indicated that he had left the United States only once, in 1987 yet according to documentation he submitted, he was in Mexico in 1984 to register the birth of his child. Finally, the director noted that at an interview, the applicant stated he entered the United States in the fall of 1981 with an H-2 visa; therefore, he was in valid nonimmigrant status as of January 1, 1982. The AAO will withdraw the last finding.

The AAO conducts a *de novo* review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.2(d)(6). 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 applicant responded to the director's NOIT. Noting material inconsistencies and the doubt cast on the remaining evidence in the record of proceedings, the director terminated the applicant's temporary residence on April 14, 2008.

On appeal, the applicant asserts that it he was not present at the registration of his child's birth certificate in Mexico and he was never issued an H-2 visa. He asserts that he entered the United States in a legal manner and provides evidence that his witnesses were in the United States during the requisite period. He asserts that he is eligible for temporary residence status.

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).

For purposes of establishing residence and physical presence under the CSS/Newman Settlement Agreements, the term "until the date of filing" in 8 C.F.R. § 245a.2(b)(1) means until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file during the original legalization application period of May 5, 1987 to May 4, 1988. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10. 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 documentation that the applicant submits in support of his claim to have arrived in the United States before January 1982 and lived in an unlawful status during the

requisite period consists of two receipts, witness affidavits, employer affidavits and letter, a Form W-2 dated 1988, an illegible Form W-2 dated 1985, and pay stubs dated in 1988.

The affidavits from [redacted] and [redacted] all contain statements that the affiants have known the applicant for many years and that they attest to the applicant being physically present in the United States during the requisite period. These affidavits fail, however, to establish the applicant's continuous unlawful residence in the United States for the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality; 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.

None of the witness statements provide 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. To be considered probative and credible, witness affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. Their content 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. Upon review, the AAO finds that, individually and together, the witness statements do not indicate that their assertions are probably true. Therefore, they have little probative value.

The employer affidavits from [redacted] and [redacted] are insufficient because they fail to state the applicant's address during employment, his exact period of employment, periods of layoff, and whether or not the information was taken from official company records. See 8 C.F.R. 245a.2(d)(3).

The final item of evidence is a sealed letter dated June 2003 from [redacted] and [redacted] in Los Angeles, California, on the church's letterhead. [redacted] states that the applicant and his family have attended Sunday services regularly at the church for at least twenty years. In another letter, [redacted], attests to the applicant's membership.

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.

The attestation of is not deemed probative or credible because it fails to show inclusive dates of membership, the address where the applicant resided during the membership period, and establish the origin of the information being attested to. The attestation of [redacted] does not include the seal of the organization or establish the origin of the information attested to. The address listed for the applicant in [redacted] letter is not consistent with the addresses listed by the applicant on the Form I-687 for the same time period. The attestations shall be afforded little weight.

The director found that the applicant was in lawful nonimmigrant status as of January 1, 1982 because he had alleged that he entered the United States using an H-2 nonimmigrant visa. On appeal, the applicant asserts that he entered lawfully, but not with an H-2 nonimmigrant visa. The applicant failed to submit evidence of a lawful entry. This finding shall be withdrawn.

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.

Beyond the director's decision, the record indicates that the applicant was convicted on February 18, 1992 of violating section 23103 of the California Vehicle Code, reckless driving/no injury. Los Angeles county court [redacted] A single misdemeanor conviction does not affect the applicant's eligibility for temporary resident status.

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