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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:

FEB 05 2010

[REDACTED] - consolidated herein]

MSC 04 322 10296

MSC 08 268 11641 - APPEAL

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 J. Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application for temporary resident status under Section 245A of the Immigration and Nationality Act (Act) was initially approved. Subsequently, the Director, Los Angeles, California, terminated the applicant's temporary resident status. The decision to terminate is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined that subsequent investigation shows that the applicant submitted conflicting information regarding her initial entry into the United States and her continuous unlawful residence in the country that undermined the credibility of the initial evidence relied upon by the director to grant the applicant temporary residence status on August 18, 2005. The director terminated the applicant's temporary resident status, finding that the applicant had failed to present sufficient credible evidence to show that she entered the United States prior to January 1, 1982 and resided in a continuous unlawful status during the requisite period as required in 8 CFR 425a.2(b)(1) and was, therefore, not eligible to adjust to temporary resident status.

On appeal, counsel asserts that the director did not properly evaluate the documents submitted by the applicant in support of her application. In counsel's view, the evidence in the record is sufficient to establish that the applicant meets the continuous residence requirement to adjust status under section 245A of the Act.

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).

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. 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.

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 (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 applicant, a native of India who claims to have lived in the United States since December 1981, submitted a Form I-687, Application for Status as a Temporary Resident under section 245A of the Immigration and Nationality Act (Act), and Form I-687 Supplement, CSS/Newman Class Membership Worksheet on August 8, 2004. The application was approved on August 18, 2005. Subsequently, the director, Los Angeles, California, terminated the applicant’s temporary resident status.

In a Notice of Intent to Terminate (NOIT) dated March 4, 2008, the director noted that the applicant submitted conflicting information in the file that contradicted her prior statements and undermined the veracity of her claim that she had continuously resided in the United States from before January 1, 1982 through the requisite period. The applicant was granted 30 days to submit rebuttal evidence.

The applicant responded and on June 6, 2008, the director issued a Notice of Termination (NOT) terminating the applicant’s temporary resident status based on the grounds that the information and documentation submitted were insufficient to overcome the grounds for termination.

On appeal, counsel asserts that the director did not properly evaluate the documents submitted by the applicant in support of her application. In counsel’s view, the evidence in the record is sufficient to establish that the applicant meets the continuous residence requirement to adjust status under section 245A of the Act.

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 issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he entered before January 1, 1982 and resided continuously in the United States in an unlawful status through the requisite period. The documentation submitted by the applicant in support of her application consists primarily of affidavits from individuals who claim to have lived with or otherwise known the applicant in the United States during the requisite period.

The AAO has reviewed each document in its entirety to determine the applicant's eligibility.

The record reflects that contrary to the applicant's assertion that she entered the United States in December 1981 and resided continuously in the country through the requisite period, other documentation in the record indicates otherwise. On the Form I-687 the applicant filed in August 2004, the applicant indicated that she made two trips outside the United States during the requisite period. The first was a social visit to Canada from May 10, to June 15, 1987, and the second was a family visit to India, from December 1988 to July 1992. The applicant did not indicate any other trips outside the United States during the requisite period.

The record includes a copy of the applicant's passport issued to the applicant in Chandigarh, India, on January 20, 1983. The said passport was renewed in Chandigarh, India, on April 15, 1988. The information about the passport strongly suggests that the applicant was in India during the periods indicated on the passport and not in the United States as she had claimed. The indicated absences on the Form I-687 did not account for the dates on the passport.

The record includes a Form I-213 (Record of Deportable Alien) completed on July 5, 1992, by an officer of the then Immigration and Naturalization Service (INS). The form indicates that the applicant was encountered by an INS agent on July 5, 1992, while attempting to enter the United States at or near Calexico, California. The applicant was interviewed. During questioning, the applicant stated that she and her brother left India on June 29, 1992 and traveled to Mexico, through Germany, and that they remained in Mexico until July 4, 1992, when they attempted to enter the United States without inspection. The applicant did not provide any United States address and did not claim prior entry or residence in the United States prior to the July 5, 1992, encounter. The applicant requested Immigration hearing and was released into the United States on her own recognizance. On the Form I-217 (Information for Travel Document or Passport) completed with the Form I-213, the applicant indicated her address in country of last foreign residence as [REDACTED]

The applicant has not submitted any credible or objective evidence to establish her alleged entry into the United States in 1981. Therefore, based on the information on the Form I-213, it appears that the applicant entered the United States on July 5, 1992. The applicant is therefore not eligible to adjust status as a temporary resident under section 245A of the Act.

The applicant has not provided any objective evidence to establish that she entered the United States before January 1, 1982, and did not indicate any absences from the United States that would have accounted for her attempted illegal entry into the United States on July 5, 1992.

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 without competent objective evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record.

As indicated above, the applicant has submitted conflicting statements and documents in support of her application. The applicant has not provided any objective evidence to explain or reconcile the contradiction. Therefore, the remaining documents in the record consisting of – affidavits from

individuals who claim to have lived with or otherwise known the applicant in the United States as well as copies of envelopes which the applicant claimed that she allegedly mailed from the United States during the 1980s – is suspect and not credible.

The affidavits in the record have minimalist or fill-in-the-blank format with very few details about the applicant's life in the United States and the nature and extent of their interactions with her over the years. The affiants do not seem to have a direct personal knowledge of the events and circumstances of the applicant's residence in the United States during the requisite period. The affidavits are not accompanied by any documentary evidence – such as photographs, letters, and the like – of the affiants' personal relationships with the applicant in the United States during the 1980s. Although the affiants submitted documents to establish their identities, none submitted documents to establish their residence in the United States during the requisite period.

Affiant [REDACTED] claims that he has known the applicant but did not indicate when he met the applicant or the circumstances of their meeting. [REDACTED] further claims that the applicant has resided with him at [REDACTED] since 1986. This affidavit is in direct conflict with the information presented by the applicant on her Form I-687. On that form, the applicant indicated her address during the same period as [REDACTED]. As previously indicated, doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See Matter of Ho, id.* For all the reasons discussed above, the AAO determines that the affidavits have little probative value. They are not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through the requisite period.

Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that she is eligible for the benefit sought.

Based on the analysis of the evidence in the record, the AAO concludes that the applicant has failed to establish by a preponderance of the evidence that she 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.

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