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U.S. Department of Homeland Security
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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FILE: [REDACTED] MSC 05 188 10138

Office: LOS ANGELES

Date: FEB 19 2010

IN RE: Applicant:



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:



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.

The applicant was granted lawful temporary residence status under section 245A of the Immigration and Nationality Act (Act). On March 11, 2008, the director issued a Notice Of 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 with an affidavit dated March 27, 2008. The director determined that the applicant had not overcome the grounds set forth for termination and issued a Notice Of Termination (NOT) on April 25, 2008. In the NOT, the director determined that the applicant was ineligible for temporary residence under section 245A of the Immigration and Nationality Act (Act) and terminated the applicant's temporary residence.

On appeal, the applicant disputes the director's findings and the termination of her status.

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).

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 submitted affidavits from the following individuals in support of her application: [REDACTED] and [REDACTED]. The affidavits are general in nature with the affiants stating that they know the applicant had that she has resided 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 affidavits provided do not provide detailed evidence establishing how the affiants knew the applicant, the details of their association or relationship, or detailed accounts of an ongoing association establishing a relationship under which the affiants 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, 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. The affidavits 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 affiant does, by virtue of that relationship, have knowledge of the facts asserted. The affidavits submitted by the applicant, therefore, are not deemed probative and are of little evidentiary value.

- The applicant submitted eight hand written rent receipts dated in the following years: 1981, 1982, 1983, and 1988. The receipts are not supported by rental agreements, a statement from the landlord, copies of cancelled checks or any other documentation. The receipts are not

subject to verification and do not establish the applicant's residence in the United States during any portion of the requisite period.

- The applicant submitted a stamped envelope addressed to the applicant bearing a foreign post mark of November 12, 1985. The address is not one listed by applicant on the Form I-687 as a former address of hers.
- The applicant submitted merchandise receipts dated in 1988 from [REDACTED] California, and from [REDACTED]. The receipts do not identify the applicant as having made the purchases related to the receipts.
- The applicant submitted an envelope bearing her name from [REDACTED] bearing a handwritten date of August 30, 1985.
- The applicant submitted merchandise receipts in her name from the [REDACTED] with dates in 1986 and 1987.
- The applicant submitted a copy of a bus ticket dated May 14, 1987. The ticket does not reference the applicant.
- The applicant submitted a copy of a document from the [REDACTED] emergency department listing the applicant as a patient on March 12, 1986.
- The applicant submitted an unsigned letter on the letterhead of [REDACTED] dated August 12, 1982 asking the applicant to contact the clinic concerning abnormal lab results. The applicant submits no additional medical records relative to this statement.
- The applicant submitted an unsigned statement from the [REDACTED] dated February 23, 1985, addressed to the applicant stating that the results of a medical procedure.

The above referenced documents, when considered singularly or collectively, do not establish the applicant's continuous residence in the United States throughout the requisite period.

- The record contains a copy of the birth certificate of the applicant's son, [REDACTED]. The birth was registered on January 20, 1982. The director noted in his decision terminating the applicant's temporary resident status that the birth certificate indicates that the applicant was in Mexico on January 20, 1982 registering the child's birth. The registration was witnessed by [REDACTED] and [REDACTED], not the applicant. The applicant denies being present at the registration and the birth certificate does not establish the applicant's presence in Mexico on that date. The birth certificate does indicate that the applicant had a domicile in Mexico at that time.

The only other evidence submitted by the applicant in support of his application are his 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 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 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 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.