U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS2090
Washington, DC 20529-2090

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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: HOUSTON Date: FEB 27 2010

MSC 06 031 20387

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 Rhew
Chief, Administrative Appeals Office

DISCUSSION: The applicant's status as a temporary resident was terminated by the Director, Houston. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

In her decision, the director states that the applicant was granted lawful temporary residence status under section 245A of the Immigration and Nationality Act (Act). On December 17, 2008, the director issued a Notice Of Intent To Terminate (NOIT) the applicant's temporary residence status in accordance with the regulations at 8 C. F. R. § 245a.2(u)(2)(i). Specifically, the director stated in the NOIT that the documentation submitted by the applicant in support of her application was insufficient to establish the applicant's residence in the United States throughout the requisite period. The director further noted that information contained in some of the affidavits submitted by the applicant was not verifiable. The applicant responded to the director's NOIT in a document dated January 9, 2009, wherein the applicant stated that the NOIT was improperly served on the applicant because it was not sent by certified mail as required by 8 C.F.R. § 245a.420(ii). The cited regulation does not require that a NOIT be served upon an applicant by certified mail. The regulation states that "[t]ermination of an alien's status will be made only on notice to the alien sent by certified mail directed to his or her last known address . . . ." The director's decision terminating the applicant's status was sent to the applicant by certified mail as required by regulation. The applicant's contention in this regard is without merit. The applicant submitted additional evidence in opposition to the director's NOIT and states that she has submitted sufficient evidence to sustain her application.

The director terminated the applicant's temporary residence status by decision dated April 3, 2009, stating that affidavits submitted on behalf of the applicant did not establish the applicant's residence for the duration of the requisite period. The director further noted that attempts were made to contact affiants for verification purposes and that some could not be contacted. The director also noted that [redacted] provided information during the verification process that contradicted information contained in her affidavit concerning the applicant's residence during the requisite period.

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).

United States Citizenship and Immigration Services (USCIS) records reveal that the applicant filed a Form I-698, Application to Adjust Status from Temporary to Permanent Resident, on March 26, 2007 after being granted lawful temporary permanent residence under section 245A of the Act. The Form I-698 was rejected because the applicant's temporary resident status was terminated as indicated above.

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 18 individuals in support of her application. The affidavits are general in nature and indicate that the affiants know the applicant, and that the applicant 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 submitted 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.

It must further be noted that some of the affiants provided contradictory information.

- [redacted] stated in an affidavit dated January 3, 2009, that she had known the applicant since 1982. When contacted by United States Citizenship and Immigration Services (USCIS) personnel to verify the contents of her affidavit, she stated that she had known the applicant since 1989, 1990 or 1992, but that she was not really sure. On appeal, the affiant submits another affidavit, this time stating that when she was contacted by USCIS personnel for verification purposes she was busy at work and provided incorrect information. The affiant then states that she has actually known the applicant since 1982.

- [redacted] stated in her affidavit dated January 5, 2009, that she first met the applicant in February of 1984 and that the applicant's address at that time was "[redacted] The applicant stated on the Form I-687 that from January of 1984 until June of 1996 she resided at [redacted] The applicant further states on the Form I-687 that she resided at "[redacted]" from July of 1986 until February of 1994.

The inconsistencies noted have not been satisfactorily explained and are material to the applicant's claim because they have a direct bearing on the applicant's activities and whereabouts during the requisite period. 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 unless the petitioner submits competent objective evidence pointing to where the truth lies. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

- The applicant submitted a statement signed by [redacted], Church of The Holy Name, located in Houston, Texas, which states that based on church records the applicant was registered with his parish from 1981 to the date of his statement (February 25, 1991). When contacted on October 2, 2006 for verification purposes, Holy Name representatives said that [redacted] served the parish in the late 1980s or early 1990s, but that church records only contain current registration information about its members.

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 submitted technically complies with the cited regulation, but lacks sufficient detail to establish the applicant's residence in the United States throughout the requisite period. It only indicates that the applicant was registered with the parish as early as 1981. The document provides no other details about the applicant's residence during the requisite period, or of her attendance record at the church or participation in other church activities whereby [redacted] could have knowledge of the applicant's whereabouts and activities during the period attested to.

The applicant submitted two employment letters in support of her application:

- [redacted] submitted an affidavit stating that the applicant was employed as a housekeeper from January of 1986 until December of 1989, earning $75.00 per week. The employer states that the applicant resided at "[redacted]
- [redacted] submitted an affidavit stating that the applicant was employed as a housekeeper from January of 1985 until December of 1986, earning $75.00 per week. The employer states that the applicant resided at "[redacted]

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable. The employment statements submitted by the applicant fail to provide the information required by the above-cited regulation. The statements do not: show periods of layoff (or state that there were none); declare whether the information provided was taken from company records; or identify the location of such company records and state whether they are accessible or in the alternative why they are unavailable. As such, the employment statements are not deemed probative and are of little evidentiary value.

The only other evidence submitted by the applicant in support of her application is her 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, and in consideration of the inconsistencies of record between the applicant's statement and other evidence, 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, and the inconsistencies noted above, 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, and the inconsistencies noted, 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.