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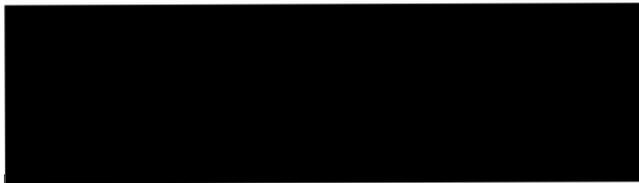
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, D.C. 20529-2090



U.S. Citizenship
and Immigration
Services

L1



FILE:



Office: LOS ANGELES

Date:

JAN 29 2010

MSC 05 188 13316

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:

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 the matter 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 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 on appeal. The appeal will be dismissed.

The director determined that the applicant had not established by a preponderance of the evidence that she had continuously resided in the United States in an unlawful status for the duration of the requisite period. The director terminated the applicant's temporary resident status, finding that the applicant had not met her burden of proof and was, therefore, not eligible to adjust to temporary resident status.

On appeal, the applicant asserts that she has submitted sufficient evidence to establish her continuous residence since 1981 and "if I contradicted myself with statements is only because lack of memory for such a long period of time."

The status of an alien lawfully admitted for temporary residence may be terminated at any time if it is determined that the alien was ineligible for temporary residence under section 245A of the Act. 8 C.F.R. § 245a.2(u)(1)(i).

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).

An alien applying for adjustment of status 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. *See* 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 including affidavits 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.* 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 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.

On April 6, 2005, the applicant filed her Form I-687 application, which was approved on August 5, 2005. On May 15, 2009, the director terminated the applicant’s temporary resident status. At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet her burden of establishing continuous unlawful residence in the United States during the requisite period.

In an attempt to establish continuous unlawful residence in the United States since prior to January 1, 1982, the applicant submitted:

- A photocopied statement dated August 10, 1987, from a representative of Remedy Temporary Services in Torrance, California, who indicated that the applicant was employed by its services at McDonalds from December 1981 to February 1982.
- A payment book from Phoenix indicating transactions from July 3, 1982 through June 13, 1983. The book reflects a starting date of August 3, 1982.
- A letter dated August 15, 1989, from a representative [REDACTED], doing business as [REDACTED], who indicated that the applicant was employed by its company in janitorial duties from March 1983 to October 1987
- A receipt from the County of Los Angeles Department of Hospitals dated November 21, 1981 addressed to the applicant’s father, [REDACTED], for services rendered to the applicant.
- An earnings statement dated June 27, 1987.
A California identification card issued on February 24, 1988.

At the time of her interview on February 3, 2009, the applicant indicated that she first entered the United States in January 1981; for the first eight months after arriving, she assisted [REDACTED] with housekeeping duties three to four days a week; worked at Fountain Inn as a housekeeper from

September 1981 to 1987; did not have any other job while employed at Fountain Inn; and in 1987 worked at McDonalds until 1989.

On April 9, 2009, the director issued a Notice of Intent to Terminate which advised the applicant of his intent to terminate the applicant's temporary status. The director determined that the applicant was not eligible for temporary residence because of contradictions between her testimony and supporting documents. Specifically, the letters from Remedy Temporary Services and Far East Marine Products Co., attested to applicant's employment only at McDonalds from December 1981 to February 1982 and from March 1983 to October 1987, respectively.

The applicant, in response, asserted, in pertinent part:

Just because I worked at McDonald's does not mean that I could not worked as a Domestic employer for [REDACTED]. At McDonalds I only worked 3 days per week and there were days that I only worked 4 hours to 6 hours. Same case when I worked for East Marine Productions Co. cleaning, the job was only part time.

The director determined that: 1) it was unlikely that a temporary agency would have employed the applicant at the age of 15 (in 1981); 2) the employment letter from Far East Marine Products appeared to contradict the applicant's testimony to have been working at Fountain Inn during the same time period; 3) the hospital receipt was made out to the applicant's father; however, the applicant claimed to have resided with her uncle when she first arrived and no evidence has been presented establishing the father was in the United States in 1981; 4) the payment book from Phoenix had a starting date of August 3, 1982; however, the transactions began in July 1982 and the applicant's name appeared to have been added to the book at a later time; and 5) as the applicant would have been 16 years old, it was unlikely that she was allowed to entered into a credit contract with Phoenix. In considering the applicant's response to the Notice of Intent to Terminate, the director determined that if the applicant's response was true, it would contradict her previous testimony to have commenced working at McDonalds in 1987 and that she had no other jobs while working at Far East Marine Products.

The statements issued by the applicant on appeal have been considered. However, the evidence of record submitted does not establish with reasonable probability that the applicant was already in the United States before January 1, 1982, and that she resided in a continuous unlawful status since that date through the date she attempted to file her application as she has presented contradictory and inconsistent documents, which undermines her credibility.

The applicant indicated that she resided with her uncle when she arrived in the United States. The applicant's failure to provide documentation from this uncle for whom she resided with during the requisite period raises serious questions about the credibility of her claim and the authenticity of the documents submitted.

The applicant claimed on her Form I-687 application to have resided at [REDACTED] [REDACTED] from 1981 to 1999. The applicant, however, has not provided any credible evidence to support this claim. Furthermore, the indecipherable postmarked envelope the applicant claimed was mailed to her in 1988 was addressed to a residence in Hawthorne, California.

The applicant claimed to have worked for [REDACTED] however, she has not provided any evidence from this affiant to support her claim. Likewise, no evidence from Fountain Inn has been submitted to support the applicant's claim of employment

The applicant has not addressed the director's findings regarding her alleged employment at the age of 15 and 16 at Remedy Temporary Services and Far East Marine Products Co.

The record contains a sworn statement written in the Spanish language and signed by the applicant on February 3, 2009. In this statement, the applicant made no mention of being employed at McDonalds or at Far East Marine Products Co.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I. & N. Dec. 582 (BIA 1988).

Under these circumstances, it cannot be concluded that the applicant has established that the claim of continuous residence from before January 1, 1982, through the date of filing is credible and probably true. Therefore, the applicant has not established eligibility by a preponderance of the evidence as required by 8 C.F.R. 245a.2(d)(5) and *Matter of E--M--*, *supra*. As the applicant has not overcome the grounds for termination of status, the appeal must be dismissed.

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