

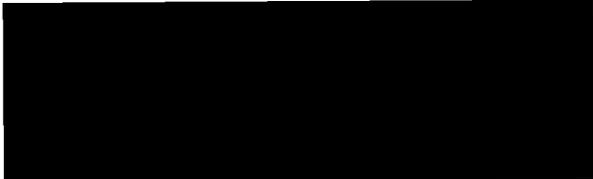
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529 - 2090



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and Immigration
Services

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FILE:

Office: HOUSTON

Date:

MAR 02 2010

MSC 05 046 12264

MSC 09 213 10158 - APPEAL

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 J. Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application for temporary resident status under Section 245A of the Immigration and Nationality Act (Act) was terminated by the Director, Houston, Texas. 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 his initial entry into the United States and his continuous unlawful residence in the country that undermined the credibility of the initial evidence relied upon by the director to approve the applicant temporary residence status on June 27, 2005. The director terminated the applicant's temporary resident status, finding that the applicant had failed to present sufficient credible evidence to show that he 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 his 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 Mexico who claims to have lived in the United States since January 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 November 15, 2004. The application was approved on June 27, 2005. Subsequently, the director, Houston, Texas, terminated the applicant’s temporary resident status.

In a Notice of Intent to Terminate (NOIT) dated January 20, 2009, the director noted that the applicant submitted conflicting information and documentation regarding his initial entry and his continuous residence in the United States that contradicted his prior statements and undermined the veracity of his claim that he 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 April 1, 2009, 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 in response to the NOIT 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 his 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 his application consists primarily of letters and affidavits from individuals who claim to

have employed, lived with or otherwise known the applicant in the United States during the requisite period, as well as envelopes - some of which the applicant claims that he mailed from the United States, and some were allegedly mailed to him at the addresses he claimed in the United States by individuals in Mexico.

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 he entered the United States in December 1981 and resided continuously in the country through the requisite period, other documentation in the record indicates otherwise. The record reflects that the applicant completed a Sworn Statement on October 29, 1991. The applicant indicated on the statement that he first entered the United States on January 1, 1983, and that he traveled outside the United States to Mexico on December 1986, and returned to the United States three months later. Based on the Sworn Statement, the applicant has not established continuous residence in the United States from before January 1, 1982, through the date he filed the application.

The record reflects that on the Form I-485 (Application to Register Permanent Resident or Adjust States) the applicant indicated that he has a son - [REDACTED] - who was born in Mexico on October 27, 1987. On the Form I-687, the applicant indicated that he traveled outside the United States to Mexico from September 2 to September 30, 1987. The applicant did not indicate any other absence from the United States during the 1980s. There is no evidence in the record that the applicant's wife was residing in the United States with the applicant during the 1980s. Therefore, the birth of the applicant's son in Mexico on October 27, 1987, strongly suggests that the applicant must have been in Mexico during the period of his son's conception.

The contradictions in the record regarding the applicant's first entry into the United States (1981 or 1983), the applicant's trips outside the United States during the 1980s, the birth of the applicant's son in Mexico in October 1987, and the lack of objective evidence to establish when the applicant entered the United States, cast considerable doubt on the veracity of the applicant's claim that he continuously resided in the United States from before January 1, 1982 through 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 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. *See id.*

Some of the envelopes bear a return address of [REDACTED] and some bear the address of [REDACTED]. The addresses listed above are in direct conflict with the addresses claimed by the applicant on the Form I-687. In fact, the applicant did not indicate the addresses listed above as any of his addresses in the United States since entry. Thus, the envelopes cannot serve as credible evidence of the applicant's residence in the United States during the request period. 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.*

The record includes a letter of employment signed by [REDACTED] dated October 11, 1991, stating that the applicant was employed from January 21, 1981 to May 15, 1991, in "maintenance." The letter does not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because it did not provide the applicant's address during the periods of employment, did not indicate whether the information was taken from company records, and did not indicate whether such records are available for review. The letter is not written on a company letterhead and the author did not specify his position in the company or the authority he possesses to author the letter. The letter is not supplemented by any earnings statements, pay stubs, or tax records demonstrating that the applicant was actually employed during any of the years claimed. Thus, the employment letter has limited probative value. It is not persuasive evidence that the applicant resided continuously in the United States from before January 1, 1982 through the requisite period.

As for the affidavits in the record, they 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 him 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 some of the affiants submitted documents to establish their identities, none submitted documents to establish their residence in the United States during the requisite period.

[REDACTED] claims that he has known the applicant since February 1981 and that the applicant resided at [REDACTED], and that the applicant resided at [REDACTED] Houston, Texas, as of February 10, 2009, when he completed his affidavit. [REDACTED] claims that she resided with the applicant at [REDACTED], from June 1989 until the time she completed the affidavit (December 28, 1983). These affidavits are in direct conflict with the addresses claimed by the applicant on the Form I-687. On that form, the applicant indicated his residence during the same periods as: [REDACTED], from January 1981 to February 1991 and [REDACTED], from February 1991 to September 1994.

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.

As fully discussed above, the applicant has submitted conflicting statements and documents in support of his application. The applicant has not provided any objective evidence to explain or reconcile the contradictions. Therefore, the remaining documents in the record consisting of – various receipts, pay stub from Furniture Factory (not one of the applicant's employers) – are suspect and not credible. It must be concluded that the applicant has failed to establish his continuous residence in the United States during 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 he 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 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.

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