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FILE:



Office: HOUSTON

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[consolidated herein]

MSC 05 230 10551

MSC 09 223 12390 – APPEAL

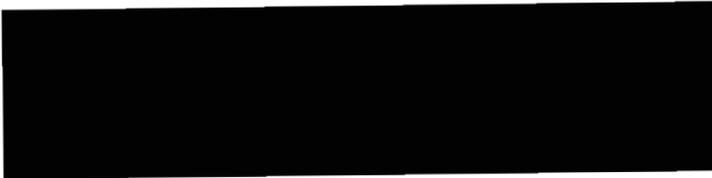
IN RE:

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 February 3, 2006. 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. Counsel submits additional affidavits from witnesses attesting to the applicant continuous residence in the United States during the requisite period.

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 El Salvador who claims to have lived in the United States since before January 1, 1982, 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 May 18, 2005. The application was approved on February 3, 2006. Subsequently, the director terminated the applicant’s temporary resident status.

In a Notice of Intent to Terminate (NOIT) dated December 3, 2008, the director noted that the applicant submitted documents and information in the record 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 6, 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 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. Counsel submits additional affidavits from witnesses attesting to the applicant continuous residence in the United States during the requisite period.

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. Here, the AAO finds that the applicant has failed to meet his burden.

The record reflects that contrary to the applicant's assertion that he entered the United States before January 1, 1982 and resided continuously in the country through the requisite period, other documentation in the record suggests otherwise. The record reflects that the applicant was apprehended by an agent of the then Immigration and Naturalization Service (INS) on March 13, 1981, near Roma, Texas. The interviewed and a Form I-213 (Record of Deportable Alien) completed on the same date. During the interview, the applicant stated that he left El Salvador on March 5, 1981, traveled through Guatemala and Mexico and entered the United States on March 13, 1981, by wading through Rio Grande River. The applicant did not provide any United States address and did not claim prior entry or residence in the United States before the March 13, 1981, apprehension. The applicant requested Political Asylum and was released on a bond. The applicant was served with an Order to Show Cause. On March 25, 1981, the applicant was ordered deported by the Immigration Judge, and on April 3, 1981, the applicant was deported to Mexico through Harlingen, Texas.

The applicant claims that he re-entered the United States before January 1, 1982, but did not provide any objective credible evidence to establish when he re-entered the United States. In support of his claim, the applicant submitted several letters and affidavits from individuals who claim to have employed, resided with or otherwise known the applicant in the United States during the requisite period, as well as copy of W-2 Earnings Statement from a company in Los Angeles, California, and copies of Electric Service Bill from Houston Light and power Company, addressed to the applicant at the addresses he claimed in the United States, dating from November 1987 onwards.

The letters and 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 him over the years. The authors 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 letters and affidavits are not accompanied by any documentary evidence – such as photographs, letters, and the like – of the authors' personal relationships with the applicant in the United States during the 1980s. While some of the authors submitted documents to establish their identities, none submitted documents to establish their residence in the United States during the requisite period.

\_\_\_\_\_ claims that the applicant resided with him at \_\_\_\_\_ Washington, DC. From September 1989 to July 27, 1990. The applicant on the other hand, stated that he resided at the said address from January to July 1989, and that he resided at an unidentified address in Long Island, New York, from July 1980 to July 1990.

\_\_\_\_\_ claims that he has known the applicant since 1985 or 1986, and that the applicant worked for him performing such duties as yard work, painting, housecleaning, etc. \_\_\_\_\_ did not specify the applicant's address during the period of employment, did not indicate whether the information about the applicant was taken from company records, where the records are kept and whether the records are available for verification. The letter is not accompanied by any W-2, pay stubs or tax record demonstrating that the applicant was employed during the years indicated. Most importantly, the letter is inconsistent with the employment information provided by the applicant on the Form I-687 he filed in 2005, as well a copy of the W-2 Earnings Statements in the record. On the Form I-687, the applicant indicated his employment during the relevant period as \_\_\_\_\_ Houston, Texas, from 1981 to 1990. The applicant claimed that he worked for \_\_\_\_\_ from 1990 to 1994.

The inconsistencies discussed above, call into serious question the veracity of the applicant's claim that he had continuously resided in the United States from before January 1, 1982 through the requisite period, the credibility of the letters as well as the credibility and reliability of the other letters and affidavits submitted by the applicant as evidence of his residence in the United States 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 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. For all the reasons discussed above, the letters and 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 indicated 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 – a copy of W-2 Wage and Tax Statement and copies of Electric bills from Houston Lighting and Power company – is suspect. For example, the copy of the 1987 W-2 Wage and Tax Statement from a company in Los Angeles, California, addressed to the applicant with social security number - [REDACTED] is inconsistent with the applicant's social security number listed on the Social Security Administration (SSA) letter dated October 21, 1998. On that letter, the SSA indicated that the applicant has not been assigned any other social security number. Additionally, the employer information on the W-2 Form is inconsistent with the employer information claimed by the applicant on the Form I-687 he filed in 2005. 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 bills from Houston Light and Power Company dated from 1987 cannot serve as evidence of the applicant's residence in the United States from before January 1, 1982.

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 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.