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

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: LOS ANGELES Date: SEP 2 9 2010

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:

SELF-REPRESENTED

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 temporary resident status on January 13, 2006 under section 245A of the Immigration and Nationality Act (Act), as amended, 8 U.S.C. § 1255a. However, the regulation at 8 C.F.R. § 245a.2(b)(1) states in pertinent part, "the temporary resident status may be terminated upon the occurrence of any of the following: (i) it is determined that the alien was ineligible for temporary residence under section 245A of this Act; . . ."

On October 20, 2009, the director issued a Notice of Intent to Deny (NOID) the applicant's temporary resident status. The NOID indicated that the information regarding residence and employment provided by the applicant was incomplete and inconsistent. The director provided the applicant with an opportunity to address insufficiencies in the evidence. The applicant failed to overcome the reasons stated in the NOID and, therefore, the director terminated the applicant's temporary residence on December 4, 2009. The applicant filed a timely appeal.

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).

On October 20, 2009, the director issued a Notice to Intent to Terminate (NOIT) in accordance with the regulations at 8 C. F. R. § 245a.2(u)(2)(i), providing the applicant an opportunity to present additional evidence of his continuous residence during the relevant period. The director issued a notice of termination (NOT) on December 4, 2009. In the NOT, the director determined that the applicant failed to respond to the NOIT and was ineligible for temporary residence under section 245A of the Act. The applicant's temporary resident status was terminated.

On appeal, the applicant indicates that he did submit a timely response to the NOIT. The AAO notes that the record does not include a copy of the NOIT response, however, the applicant submits a copy of a registered mail receipt indicating that he filed a timely response. Therefore, the AAO will issue a full decision.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Following *de novo* review, the AAO finds that the applicant has failed to establish his continuous residence in the United States from January 1, 1982 through the end of the relevant 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 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 has established that he (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. In support of his eligibility, the applicant submits the following:

- Affidavits from [redacted] While the affiants indicate that the met the applicant during the relevant period, their statements do not include sufficient detailed information about the applicant's continuous residency in the United States since before January 1, 1982 and throughout the requisite period. For example, [redacted] indicates that he took the applicant to the Mexican border in August 1987 so that he could visit his father in Mexico. In a separate letter, [redacted] indicates that the applicant has been a customer of his jewelry business since 1982. [redacted] indicates that she met the applicant in 1988. Neither of the witnesses supplies any details about the

applicant's life and their interaction with each other, his employment, shared experiences or the date and manner he entered the United States. They also fail to indicate how they date their initial acquaintance with the applicant. The affiants fail to indicate any other details that would lend credence to their claimed acquaintance with the applicant and the applicant's residence in the United States during the requisite period.

- An affidavit from [redacted] who indicates that the applicant worked for him from January 1, 1982 until March 1989 as a watchman and car wash attendant. The letter fails to meet certain regulatory standards set forth at 8 C.F.R. § 245a.2(d)(3)(i), which provides that letters from employers must include the applicant's address at the time of employment; exact period of employment; whether the information was taken from official company records and where records are located and whether United States Citizenship and Immigration Services (USCIS) may have access to the records; if records are unavailable, an affidavit form-letter stating that the employment records are unavailable may be accepted which shall be signed, attested to by the employer under penalty of perjury and shall state the employer's willingness to come forward and give testimony if requested. The statement noted does not include much of the required information and can be afforded minimal weight as evidence of the applicant's residence in the United States for the duration of the requisite period.

- A copy of a letter from [redacted] of Wilmington, California indicating that the applicant was a member of [redacted] from January 1982 until 1990. The letter is singed by [redacted] who indicates that USCIS can inspect the membership records of the church to verify the applicant's membership. This letter does not conform to the statutory requirements for attestations by churches, unions, or other organizations, which is found at 8 C.F.R. § 245a.2 ((d)(3)(v). That regulation requires such attestations to "show the inclusive dates of membership and state the address where the applicant resided during the membership period." The affiant indicates only the applicant's address at the time of signing the affidavit, 1990.

- Paycheck stubs issued to the applicant from [redacted] dated June through July 1987 and March 1988. The applicant does not list this employer on his Form I-687. He lists only employment with [redacted] from January 1982 until December 1990. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the 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).

It is also noted that the applicant was interviewed by USCIS on September 15, 2009 in connection with this application. During that interview, the applicant indicated that he departed the United States in August 1987 and did not reenter the United States until 1989. The director noted that this absence exceeds the 45 day limit for authorized absences pursuant to 8 C.F.R. § 245a.2(h). On appeal, the applicant indicates that he returned to the United States on September 7, 1987 although he provides no additional evidence which supports his assertion.

Therefore, based upon the foregoing, the applicant is ineligible for temporary residence because she failed to establish by a preponderance of the evidence that she 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.* Any temporary resident status previously granted to the applicant is terminated.

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