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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

FILE: [redacted] Office: HOUSTON Date: MAY 09 2011

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 denied by the Director, Houston, Texas. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

On January 29, 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 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 denied the applicant's application for temporary resident status on June 30, 2010. The applicant filed a timely appeal.

On appeal, the applicant indicates that he has submitted sufficient evidence of his eligibility.

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).

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 of time. In support of his eligibility, the applicant submits the following:

- Employment letters from [redacted] who indicate that the applicant worked for them during portions of the relevant period. These letters 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 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 statements noted above do 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.

- Written statements from [redacted] indicating that the applicant lived with him at [redacted] from 1983 until 1984, and [redacted] who indicates that the applicant lived with him at [redacted] from 1981 until 1983.

- An employment letter from [redacted] signed by [redacted] indicating that the applicant worked for the company under the name [redacted] from August 1983 until August 1986. The applicant fails to list any alias' on either his current Form I-687 or previous Form I-687 signed in 1990. Because the record of proceedings reflects two different names, the applicant has the burden of proving that he was in fact the person who used each name. 8 C.F.R. § 245a.2(d)(2). To meet the requirements of this

regulation, documentation must be submitted to prove the common identity, i.e., that the assumed name(s) were in fact used by the applicant. The most persuasive evidence is "a document issued in the assumed name which identifies the applicant by photograph, fingerprint or detailed physical description. Other evidence which will be considered are affidavits(s) by a person or persons other than the applicant made under oath, which identify the affiant by name and address, state the affiant's relationship to the applicant and the basis of the affiant's knowledge of the applicant's use of the assumed name." 8 C.F.R. § 245a.2(d)(2). The letter [redacted] does indicate that the applicant worked under the assumed name, however, the declarant does not indicate how she knows that the applicant used an assumed name or whether company records reference the use of the alias. Since the applicant failed to submit sufficient evidence that the alias properly refers to him, the credibility and probative value of the letter is substantially diminished. Finally, this letter also fails to conform to the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i).

- A second letter from [redacted] signed by [redacted] indicates that the applicant was employed by the company under the name [redacted] from August 1983 until August 1986. Attached to the copy of the letter is a photograph which is not legible.

- A written statement from [redacted] who indicates that the applicant lived with him at [redacted] from 1984 until 1990.

- Envelopes addressed by the applicant dated in 1983, 1984, 1985 and 1986. These envelopes provide some evidence of the applicant's presence in the United States on the dates indicated.

The applicant has the burden of proving by a preponderance of the evidence that she has resided in the United States for the requisite period. 8 C.F.R. § 245a.2(d)(5). To meet her burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. 8 C.F.R. § 245a.2(d)(6). The applicant has not provided any additional relevant evidence which supports his eligibility.

Finally, the AAO notes that on April 15, 1993, the applicant was convicted in County Criminal Court of Harris County, Texas, of *Driving While Intoxicated*, a misdemeanor [redacted] A single misdemeanor conviction does not render the applicant ineligible for temporary resident status.

Therefore, based upon the foregoing, the applicant is ineligible for temporary residence because he 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.*

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