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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

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[redacted]

Date: FEB 1 0 2012 Office: HOUSTON FILE: [redacted]

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 director of the Houston office terminated the temporary resident status of the applicant, pursuant to the terms of the CSS/Newman Settlement Agreements, finding the applicant to be ineligible for temporary resident status based on both a lack of documentation and inconsistent documentation in the record of proceedings. The appeal will be dismissed.

On appeal, the applicant asserts that the evidence which he previously submitted establishes by a preponderance of the evidence that he continuously resided in the United States in an unlawful status throughout the requisite period. He asserts that any inconsistencies in the evidence are errors in recollection due to the passage of time. Counsel has submitted an additional statement from the applicant on appeal. The AAO has considered counsel's assertions, reviewed all of the evidence, and has made a *de novo* decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the evidence.[1]

The temporary resident status of an alien may be terminated upon the determination that the alien was ineligible for temporary residence. Section 245A(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1255a(b)(2)(A), and 8 C.F.R. § 245a.2(u)(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).

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 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. 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, 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).

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[1]The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

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. *See* 8 C.F.R. § 245a.2(d)(6). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

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. 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. *Matter of Ho,* 19 I & N Dec. 582, 591-592 (BIA).

The issue in this proceeding is whether the applicant has overcome the inconsistencies in the record and established his eligibility for temporary resident status. As stated, the applicant must establish that he (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status throughout the requisite period. The documentation that the applicant submits in support of his claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists of witness statements and documents. The AAO has reviewed the documents in their entirety to determine the applicant's eligibility; however, the AAO will not quote each statement in this decision. Some of the evidence submitted indicates that the applicant resided in the United States after May 4, 1988; however, because evidence of residence after May 4, 1988 is not probative of residence during the requisite time period, it shall not be discussed.

The record contains witness statements from [redacted] (the applicant's sister), [redacted] (the applicant's niece, born in 1977), [redacted]

[redacted] (the applicant's mother).[2] The statements are general in nature and state that the witnesses have knowledge of the applicant's residence in the United States for all, or a portion of, the requisite statutory period.

Although the witnesses claim to have personal knowledge of the applicant's residence in the United States during the requisite period, the witness statements do not provide concrete information, specific to the applicant and generated by the asserted associations with him, which would reflect and corroborate the extent of those associations, and demonstrate that they were a sufficient basis for reliable knowledge about the applicant's residence in the United States during the requisite period. To be considered probative and credible, witness statements must do more than simply state that a witness knows an applicant and that the applicant has lived in the United States for a specific period. Their content must include sufficient detail from a claimed relationship to indicate that it probably did exist and that the witness, by virtue of that relationship, does have knowledge of the facts alleged. For instance, the witnesses do not state how they date their initial meeting with the applicant in the United States, or specify social gatherings, other special occasions or social events when they saw and communicated with the applicant during the requisite period. The witnesses also do not state how frequently they had contact with the applicant during the requisite period, or provide specific locations where the applicant resided during that period. The witnesses do not provide sufficient details that would lend credence to their claimed knowledge of the applicant's residence in the United States during the requisite period. For these reasons the AAO finds that the witness statements do not indicate that their assertions are probably true.

In addition, in a joint statement dated October 15, 1994, [redacted] (the applicant's sister) and [redacted] stated that the applicant resided with them from early 1980 to June 1982. The testimony of these witnesses is inconsistent with the testimony of the applicant at the time of his interview on December 1, 2005, at which time he amended the instant I-687 application to specify that he resided with his sister from December 1980 to June 1982 and from February 1988 through the end of the requisite period. In addition, [redacted] stated that he worked with the applicant from 1985 to 1987 at a garden center named '[redacted]. However, the testimony of this witness is inconsistent with the testimony of the applicant in the instant I-687, in which he does not list employment in the United States in 1986 or 1987. Due to these inconsistencies, the testimony of these witnesses has minimal probative value.

The applicant has submitted two employment verification letters from [redacted] Personnel Manager of [redacted] Texas, stating that from January 20, 1981 until December 31, 1985 the applicant was working as a picker at [redacted] and worked for [redacted] in 1988. The applicant also submitted an employment verification letter from [redacted], the owner and manager [redacted] in Texas, stating that the applicant was employed for three weeks in

[2] The AAO notes that [redacted] (the applicant's mother) was living in Mexico during the requisite period, and, therefore, did not have first-hand knowledge of the applicant's continuous residence in the United States during the requisite period. Therefore, the witness's statement has minimal probative value.

1986 and 1987, respectively, and for one week in January 1988. However, the employment verification letter from [redacted] is inconsistent with the testimony of the applicant in the instant I-687, and in an initial I-687 application signed by the applicant, in both of which he failed to list any employment in the United States in 1986 and 1987. Due to this inconsistency, the employment verification letter of [redacted] has minimal probative value.

Further, the employment verification letters of [redacted] do not meet the requirements set forth in the regulations, which provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment. The regulation at 8 C.F.R. § 245a.2(d)(3)(i) provides that letters from employers must include: (A) Alien's address at the time of employment; (B) Exact period of employment; (C) Periods of layoff; (D) Duties with the company; (E) Whether or not the information was taken from official company records; and (F) Where records are located and whether the Service may have access to the records. If the records are unavailable, an affidavit-form letter stating that the alien's employment records are unavailable and why such records are unavailable may be accepted in lieu of subsections (E) and (F). The employment verification letters fail to comply with the above cited regulation because they lack considerable detail regarding the applicant's employment. For instance, the witnesses do not state the applicant's daily work duties, the number of hours or days he was employed, the location at which he was employed, or his residence at the time of employment. Furthermore, the witnesses do not state how they were able to date the applicant's employment. It is unclear whether they referred to their own recollection or any records they may have maintained. For these additional reasons, the employment verification letters have diminished probative value.

The applicant has submitted an attestation from [redacted] stating that the applicant has been attending the [redacted] Texas since October 20, 1981. However, the witness statement does not meet the requirements set forth at 8 C.F.R. § 245a.2(d)(3)(v), which provides requirements for attestations made on behalf of an applicant by churches, unions, or other organizations. Attestations must: Identify applicant by name; (2) be signed by an official (whose title is shown); (3) show inclusive dates of membership (4) state the address where the applicant resided during membership period; (5) include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; (6) establish how the author knows the applicant; and (7) establish the origin of the information being attested to. This attestation fails to comply with the cited regulation. The witness does not state the address where the applicant resided during his membership period, does not establish how he knows the applicant, nor indicate the origin of the information provided. Therefore, this attestation is of diminished probative value.

The applicant has submitted receipts and five postmarked stamped envelopes dated during the years 1980 to 1983, and a birth certificate for his daughter born in Texas in March 1988.[3] The applicant has also submitted copies of three photographs of himself dated 1980, 1981 and 1982, and a copy of

[3] The AAO notes that some of these documents listed addresses for the applicant that were not listed on his Form I-687, i.e., [redacted] Texas. Given this discrepancy, these envelopes will be given no weight. The remaining envelopes will be given some weight.

an undated employee identification card from [redacted] However, since the locations depicted in the photographs cannot be identified, and since the identification card is not dated, the photographs and identification card do not establish the applicant's continuous residence in the United States during the requisite period, and will be given no weight.

The remaining evidence in the record is comprised of copies of the applicant's statements, the instant I-687 application, the initial I-687 application, signed by the applicant in 1994 and filed to establish his CSS class membership, and a Form I-698, application to adjust status from temporary to permanent resident.[4]

The AAO finds that the submitted documents, considered individually and together with other evidence of record, establish the applicant's entry into the United States before January 1, 1982, continuous residence in the United States through December 1985, and residence in the United States in 1988. However, the AAO also finds in its *de novo* review that the record of proceedings contains materially inconsistent statements from the applicant regarding the date of his initial entry into the United States and the dates of his absences from the United States during the requisite period.

At the time of completing the instant I-687 application, the applicant listed residences in [redacted] Texas from December 1980 to October 1985, and from February 1988 through the end of the requisite period. He listed employment as a picker at [redacted] from January 1981 to December 1985, and from 1988 through the end of the requisite period. The applicant did not list any residences or employment in the United States in 1986 or 1987. He listed three absences from the United States, from December 1985 to February 1985 (sic), from December 1986 to January 1987, and in July 1987, and, at number 16, a date of last entry into the United States on September 15, 1988. At the time of his interview on December 1, 2005, he amended the instant I-687 application to list a fourth absence during the requisite period, in February 1988, and amended the application at number 16, to list a date of last entry into the United States on February 26, 1988.

At the time of his interview on December 1, 2005, the applicant stated that he first entered the United States in December 1980.

At the time of his interview on May 17, 1995, in a class member worksheet signed by the applicant on the same date, and in his statement on appeal, the applicant stated that he first entered the United States in February 1980.

In the initial I-687 application signed by the applicant in 1994, and in a statement dated October 18, 1994, the applicant listed one absence from the United States, from December 1985 to February 1988. According to these versions of the applicant's testimony, he was outside the United States for at least 762 days during the requisite statutory period, and is thus ineligible for the benefit. An applicant may not have been absent for more than 45 days in a single period in order to

[4] On April 12, 2011, the applicant's I-698 application was denied based upon the termination of his temporary resident status.

maintain his continuous residence, unless he establishes that his prolonged absence was due to an emergent reason. 8 C.F.R. § 245a.2(h)(1)(i).[5]

The director of the Houston office cited some of the aforementioned inconsistencies in a notice of intent to terminate (NOIT) the applicant's temporary resident status. In rebuttal to the NOIT, the applicant submitted a statement from [redacted] (the applicant's mother), stating her knowledge that the applicant was in Mexico from December 31, 1985 to February 1, 1986, after which time he returned to the United States. However, as stated above, [redacted] was living in Mexico during the requisite period, and, therefore, would not have had first-hand knowledge of the applicant's period/s of residence in the United States during the requisite period. The AAO finds that the witness's statement does not overcome the inconsistencies in the applicant's own testimony.

The AAO finds that the applicant has failed to provide probative and credible evidence of his continuous residence in the United States for the duration of the requisite period. The inconsistencies regarding the dates of the applicant's absences from the United States during the requisite period are material to the applicant's claim in that they have a direct bearing on the applicant's residence in the United States during the requisite period. No evidence of record resolves these inconsistencies. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence pointing to where the truth lies. 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. *Matter of Ho,* 19 I & N Dec. 582, 591-592 (BIA). These contradictions undermine the credibility of the applicant's claim of entry into the United States prior to January 1, 1982 and 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. The various statements currently in the record which attempt to substantiate the applicant's residence and employment in the United States during the statutory period are not objective, independent evidence such that they might overcome the inconsistencies in the record regarding the applicant's claim that he maintained continuous residence in the United States throughout the statutory period, and thus are not probative.

Based on the foregoing, the AAO finds that the applicant has failed to resolve the inconsistencies in the record with independent objective evidence. Furthermore, 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,

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[5] In his October 18, 1994 statement, the applicant describes being caught working illegally at [redacted] in Texas, and voluntarily returning to Mexico. The record does not contain evidence that the applicant was deported to Mexico.

ineligible for temporary resident status under section 245A of the Act on this basis. As the applicant has not overcome the basis for the termination of status, the appeal must be dismissed.

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