U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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PUBLIC COPY

U.S. Citizenship and Immigration Services

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[redacted]

DATE: JUN 13 2012 Office: HOUSTON, TEXAS 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 applicant's temporary resident status under Section 245A of the Immigration and Nationality Act (Act) was terminated by the Field Office Director (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 the applicant did not submit sufficient credible evidence to establish that he entered the United States before January 1, 1982 and resided continuously in the country in an unlawful status through the requisite period and terminated the applicant's temporary resident status. Specifically, the director noted that the applicant provided contradictory statements and documentation in support of his application to adjust status to temporary resident.

On appeal, counsel asserts that the evidence previously submitted by the applicant establishes by a preponderance of the evidence that he continuously resided in the United States in an unlawful status for the duration of the requisite time period. Counsel submits additional witness statements in support of the 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

[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).

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).

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 applicant, a native of Mexico who claims to have lived in the United States since 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 March 30, 2005. The application was approved on August 18, 2008. On March 8, 2012, the director terminated the applicant's temporary resident status.

In a Notice of Intent to Terminate (NOIT) dated February 1, 2012, the director noted that the affidavits the applicant submitted in support of his application were not credible and that some of the affidavits contradicted the applicant's prior statements and information on the Form I-687 application. The applicant was granted 30 days to submit rebuttal evidence.

The applicant timely responded to the NOIT, providing explanation for the evidentiary deficiencies and the inconsistencies noted by the director in the NOIT. On March 8, 2012, the director issued a Notice of Termination (NOT) terminating the applicant's temporary resident status on the grounds that the information submitted in rebuttal was insufficient to overcome the grounds of termination of temporary resident status stated in the NOIT.

On appeal, counsel asserts that the evidence of record is sufficient to establish by a preponderance of the evidence that the applicant has continuously resided in the United States in an unlawful status through the requisite period and that he is eligible for the benefit sought.

The issue in this proceeding is whether the applicant has 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 entered the United States before January 1982 and had continuously resided in an unlawful status for the requisite period consists primarily of statements and affidavits from individuals who claim to have employed or otherwise known the applicant in the United States during the 1980s. The AAO has reviewed the evidence in its 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.

There is no contemporary documentation from the 1980s that shows the applicant to have resided continuously in the United States during the requisite period for legalization. For someone claiming to have lived in the United States since 1981, it is noteworthy that the applicant is unable to produce a solitary piece of primary evidence during the following seven years through May 4, 1988.

The AAO notes that the record contains contradictory statements and documents that call into serious question the veracity of the applicant's claim that he has continuously resided in the United States from before January 1, 1982 through May 4, 1988. The applicant testified at his adjustment interview on July 5, 2005, that he first entered the United States in 1979 through Brownsville, Texas, that he returned to Mexico to get married in November 1980, and that he returned to the United States in January 1981. The applicant stated that he traveled back to Mexico in October 1981 and returned to the United States in January 1982. He further stated that he traveled to Mexico in 1986 for three months. The applicant submitted no documentary evidence in support of these claims. On the Form I-687 the applicant completed on December 5, 1990, he indicated an address in East Bernard, Texas, from 1981 to present (December 5, 1990). He indicated one absence from the United States in March 1988. The applicant did not indicate any other absence from the United States during the requisite period. On the current Form I-687,

the applicant indicated a residential address in East Bernard, Texas, from February 1981 to April 2001. The applicant did not indicate any absence from the United States during the requisite period.

The record contains a Form G-325A, Biographic Information, dated December 5, 2001, which the applicant completed under oath, and submitted with a Form I-485, Application to Register Permanent Resident or Adjust Status, that he filed on December 16, 2001. On that form, the applicant listed his last address outside the United States as [redacted], from 1957 to February 1988. The record also contains a Form I-213, Record of Deportable Alien, indicating that the applicant was apprehended on February 19, 1986, near the port of entry of Brownsville, Texas. The applicant did not provide any United States address. He was placed in removal proceedings and voluntarily left the United States for Mexico on June 20, 1986. It is unclear when the applicant returned to the United States after his voluntary departure to Mexico on June 20, 1986.

On the Form I-485, Application to Register Permanent Resident or Adjust Status, he filed on December 16, 2001, the applicant indicated that he has three children, all of whom were born in Mexico. [redacted] The information on the Form I-213 and the births of the applicant's children in Mexico, strongly suggest that the applicant was residing in Mexico during the period of their conceptions and/or birth. There is no evidence in the record to show that the applicant's wife resided with the applicant in the United States during the requisite period. The apprehension of the applicant at the United States Border with Mexico and his return to Mexico in 1986 is a very strong indication that the applicant was not residing in the United States from 1981 as he had claimed.

The inconsistencies regarding the applicant's initial entry and his continuous residence in the country call into serious question the veracity of his statement that he has continuously resided in the United States from before January 1, 1982 through May 4, 1988. It also casts serious doubt on the credibility of the witness statements and affidavits attesting to 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).

As for the statements and affidavits from witnesses who claim to have employed, been acquainted with or otherwise known the applicant in the United States during the 1980s, they have minimalist or fill-in-the-blank formats with little or no details about the applicant's life in the United States and the nature and the extent of their interactions with him over the years they claim to have known him. The statements and affidavits are not accompanied by any documentary evidence – such as photographs, letters, and the like – demonstrating the witnesses' personal relationships with the applicant in the United States during the 1980s. While some of the affiants claim to be United

States citizens, the record does not contain documentation to establish the identity and status of those witnesses. In view of the substantive deficiencies, the AAO finds the statements and affidavit not credible. They have little probative value of the applicant's residence in the United States during the requisite period.

[redacted] claims that he has known the applicant since 1983 when the applicant was employed at [redacted] in East Bernard, Texas, from 1983 to 2000. [redacted] attests to the truthfulness of his statement because he claims that he owned the company for 44 year, until his retirement in 2000. [redacted] statement does not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because the statement does not indicate the applicant's address during the periods of employment, does not provide a description of the applicant's duties and responsibilities, and does not indicate whether the information about the applicant's employment was taken from the company's records, where the records are kept and whether such records are available for review. The statement is not supplemented by earnings statements, pay stubs, or tax records demonstrating that the applicant was actually employed during any of the years claimed. In addition, the statement in inconsistent with the information the applicant provided on the Form I-687 and a letter dated February 21, 2010, from [redacted] who identified himself as the president of [redacted]. [redacted] indicated that the applicant was employed by the company from January 1999, and the applicant indicated on the current Form I-687 that he was employed by the company from 1998. As previously indicated 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, id.*

Consequently, the AAO finds the statement from [redacted] not credible. It has little probative value as evidence of the applicant's residence in the United States during the requisite period.

The inconsistencies discussed above are material to the applicant's claim in that they have a direct bearing on his residence and employment 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). Accordingly, 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, 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.