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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: MAR 0 1 2012 Office: CHICAGO 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:

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, Chicago, Illinois. 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 August 22, 2007 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 [if] it is determined that the alien was ineligible for temporary residence under section 245A of this Act."

On July 27, 2010, the director issued a Notice of Intent to Terminate (NOIT) the applicant's temporary resident status. The NOIT indicated that the information regarding residence provided by the applicant was incomplete and inconsistent. Specifically, the director noted that the applicant provided inconsistent testimony regarding his residences during the relevant period, his intial entry to the United States and his absences during the relevant period. The director noted that these material inconsistencies cast doubt on the reliability of the evidence submitted. The director provided the applicant with an opportunity to address insufficiencies in the evidence. The applicant failed to overcome the reasons stated in the NOIT and, therefore, the director terminated the applicant's temporary residence on November 8, 2010. The applicant filed a timely appeal.

On appeal, the applicant indicates that United States Citizenship and Immigration Services (USCIS) erred in terminating his temporary resident status. He provides explanations to resolve the inconsistencies noted by the director.

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 initially submitted written statements from the following individuals:

- [redacted] who indicate only that they met the applicant during the relevant period. Their statements lack sufficient detail to be considered credible. For example, the letters provide few details regarding the circumstances of the applicant's residence in the United States or of the claimed relationship of over 20 years. Furthermore, the declarants do not indicate how they date their acquaintance with the applicant or how the declarant has direct personal knowledge of the applicant's residence in the United States during the relevant period.

- [redacted] who indicates that the applicant stayed at the [redacted] in Chicago, Illinois, from 1983 until 1986. The applicant does not list this address on his Form I-687. Furthermore, even if the applicant's stays at the hotel were temporary, as he indicates on appeal, the affiant does not provide any details regarding the applicant's life, how he dates his acquaintance with the applicant or recalls the dates of his time in Chicago.

- [redacted] indicates that the applicant attended Congregational Prayers and community gatherings from April 1980 until September 1987. 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." [redacted] does not provide dates of the applicant's membership or any other information that is probative of the issue of his initial entrance to the United States prior to January 1981 or his continuous residence for the duration of the statutory period.

- [redacted] who indicates that the applicant lived with him from October 1987 until October 1992. He lists his address as [redacted] The applicant indicates on his Form I-687 that he lived at [redacted] from October 1987 until September 1989. He does not indicate ever living on [redacted] The applicant does not address this inconsistency on appeal.

- [redacted] who indicates that he has known the applicant since 1980 and that they have attended the same place of worship in Brooklyn New York. He provides no additional details of his relationship with the applicant.

- [redacted] who provide nearly identical written statements indicating that they met the applicant in 1980 and that the applicant visited Chicago several times during the relevant period staying at the [redacted] At the time of signing the statement, in 2005, [redacted] indicates that he lives in Louisiana. None of the statements provide facts regarding the applicant's life or the basis of the declarant's knowledge of his residence during the relevant period. Furthermore, the applicant indicates in response to the NOIT that he provided the declarants' a statement to sign on his behalf. In response to the director's inquiry, the applicant stated on appeal that he merely provided the declarants with a fill in the blank statement to complete. These inconsistencies cast doubt on the reliability of the witness' testimony.

- [redacted] who indicates that the applicant was a tenant of the [redacted] from 1981 until 1986. As stated above, the applicant does not indicate that he lived in Chicago prior to 1987. This statement contradicts the statement provided by [redacted] who indicates that the applicant stayed at the [redacted], in Chicago, Illinois, from 1983 until 1986.

- [redacted] who indicates that the applicant visited Chicago several times during the relevant period and began residing in Chicago in 1987. [redacted] does not indicate the basis of his knowledge or provide any details regarding his relationship with the applicant.

- [redacted] who indicates that he met the applicant in Chicago in 1987. He does not describe the circumstances of their initial acquaintance or indicate how he dates their meeting.

Overall, the statements noted 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.

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 unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92.

On appeal, the applicant has not provided independent objective evidence which resolves the material inconsistencies noted by the director. 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*. Any temporary resident status previously granted to the applicant is terminated.

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