

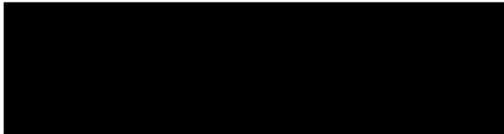
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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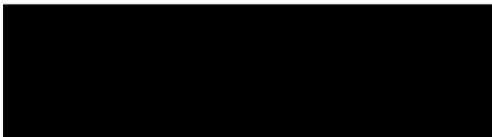
DATE: **MAR 05 2012** Office: HOUSTON, TEXAS

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

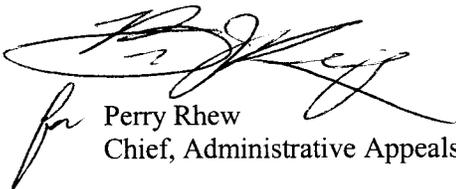
APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:



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 application for 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 she 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 the applicant provided contradictory statements and documentation in support of her Form I-698, Application to Adjust Status from Temporary to Permanent Resident under the Act.

On appeal, counsel asserts that the evidence previously submitted by the applicant establishes by a preponderance of the evidence that she continuously resided in the United States in an unlawful status for the duration of the requisite time period. Counsel submits a brief and an affidavit from the applicant to clarify the evidentiary deficiencies noted in the Notice of Termination (NOT). 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).

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).

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).

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 April 14, 2005. The application was approved on January 5, 2006. On July 7, 2011, the director terminated the applicant's temporary resident status.

In a Notice of Intent to Terminate (NOIT) dated September 10, 2010, the director indicated that the documentation submitted by the applicant, specifically, the affidavits, were determined not to

be credible. The director noted that the fill-in-the-blank affidavits submitted by individuals who claim to have known the applicant since 1981, were notarized by the same person and on the same day. The director further noted that the affiants did not submit any tangible evidence in support of their claims. He found the affidavits to have little probative value as evidence of the applicant's continuous residence through the requisite period. The applicant was granted 30 days to submit rebuttal evidence.

The applicant timely responded to the NOIT with her own affidavit, provided an explanation for the evidentiary deficiencies and the inconsistencies stated in the NOIT. The applicant submitted no additional documentation. On July 7, 2011, 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 status stated in the NOIT.

On appeal, counsel asserts that the evidence previously submitted by the applicant establishes by a preponderance of the evidence that she continuously resided in the United States in an unlawful status for the duration of the requisite time period. Counsel states that the applicant had testified truthfully under oath about her continuous residence in the United States from 1981 through 1988, which was corroborated by the evidence in the record. He also states that any evidentiary deficiencies had been cured by the applicant in her response to the NOIT. He contends that the applicant has submitted sufficient credible evidence to establish that she meets the requirements to adjust status under section 245A of the Immigration and Nationality Act (The Act).

The issue in this proceeding is whether the applicant has established her eligibility for temporary resident status. As stated, the applicant must establish that she (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 her claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists of an affidavit, which the applicant completed on July 3, 1991, a copy of a Form I-687 the applicant completed on July 17, 1991, and affidavits from individuals who claim to have personal knowledge that the applicant had resided in Houston, Texas, since 1981. 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 applicant has submitted contradictory statements and documents in support of her application. On the Form I-687 the applicant completed in 1991, she indicated one absence from the United States during the requisite period – from December 20, 1987 to January 10, 1988. On the instant application, the applicant listed five absences from the United States during the requisite period – from June 1984 through January 1988. In an affidavit dated October 4, 2010, which she submitted in response to the NOIT, the applicant stated that she departed the United States twice since 1981 – from June 1984 to July 1984; and from November 1986 to December 1986. She also stated that she did not depart the United States in 1987.

The affidavits in the record from individuals who claim to have resided with or otherwise known the applicant during the 1980s, were prepared on a fill-in-the-blank form, notarized on the same date by the same notary. The affiants all claim to have known the applicant since 1981, but only [REDACTED] provided information about the applicant's residence during the requisite period. Considering the length of time they claim to have known the applicant – in all cases since 1981 – the affiants provided very few details about the applicant's life in the United States and the nature and extent of their interactions with her over the years. The affiants do not state how they date their initial meeting with the applicant in the United States. The affidavits are not accompanied by any documentary evidence – such as photographs, letters, and the like – demonstrating the affiants' personal relationships with the applicant in the United States during the 1980s. None of the affiants provided documentation to establish their identities and their residence in the United States during the requisite period.

In addition, the affidavit from [REDACTED] is inconsistent with the applicant's statements dated July 3, 1991, and October 4, 2010. In a "Letter of Resident" dated July 27, 1991, [REDACTED] indicated that the applicant and her husband resided with him from 1981 to 1990. He provided the following addresses during the stated period:

[REDACTED]

It is to be noted that the above addresses are the same addresses listed by the applicant on the Form I-687 as her residential addresses in the United States from 1981 to 1990. In her affidavit dated July 3, 1991, the applicant stated, "My husband [REDACTED] and I have lived in the home of [REDACTED] since 1981. All payments and utility bills were in [REDACTED]'s name." In her October 4, 2010 affidavit, the applicant stated that she has never lived with the [REDACTED] family, but that they were neighbors. She states, [REDACTED] is my friend. I never lived with [him]; we lived in the same apartment complex. . . . [REDACTED] statement is incorrect. . ." The contradictory statements call into serious question the veracity of the applicant's claim and the

credibility of [REDACTED] affidavit as evidence of the applicant's continuous 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 her 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). 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.

In view of the substantive shortcomings and the inconsistencies discussed above, the AAO finds that the affidavits have little probative value. They are not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988.

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 she 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 she 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 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*. 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.