



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



LL

FILE:



Office: CALIFORNIA SERVICE CENTER

Date: JUN 12 2007

XAL 88 158 1028

IN RE:

Applicant:



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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for temporary resident status was denied by the Director, Southern Regional Processing Facility, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application based on the determination that the applicant failed to complete his application for temporary residence, Form I-687, or to comply with the documentary requirements enumerated in 8 C.F.R. § 245a.2(d). The director also found that the applicant failed to appear for his scheduled interview with a legalization officer, a requirement discussed in 8 C.F.R. § 245a.2(e)(1), and failed to provide sufficient evidence to support his claimed unlawful residence in the United States.

On appeal, counsel asserts that the applicant has resided in the United States since 1980 and explains why the applicant did not appear for his scheduled legalization interviews. The AAO notes that the applicant has provided additional documentation to satisfy the documentary requirements cited in 8 C.F.R. § 245a.2(d). The applicant also provides affidavits in support of his claimed unlawful residence.

An applicant for temporary resident status must present documents establishing proof of identity, proof of residence, and proof of financial responsibility, as well as photographs, a completed Fingerprint Card (Form FD-258), and a fully completed Medical Examination for Aliens Seeking Adjustment of Status (Form I-693). 8 C.F.R. § 245a.2(d). In addition, the applicant must appear for a personal interview at the legalization office as scheduled. 8 C.F.R. § 245a.2(e)(1). The interview may be waived only for a child under the age of 14, or when it would be impractical because of the health or advanced age of the applicant. 8 C.F.R. § 245a.2(j).

The director denied the application, in part, based on the determination that the applicant had failed to comply with the requirement that he appear for a scheduled interview with a legalization officer. Although given ample opportunities to do so, the applicant failed to comply with Citizenship and Immigration Services (CIS) requirements. The applicant did not report for at least two scheduled interviews on July 26, 1989 and December 11, 1989. Although counsel claims that the applicant did not receive the interview notices as a result of having moved, the applicant bears the burden of reporting his address changes. The record does not indicate that the applicant was diligent in informing CIS of his changes in his mailing address. Since there is no evidence that the interview requirement was waived, the applicant is ineligible for temporary resident status.

Additionally, 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).

An applicant for temporary resident status under section 245A of the Act has the burden to establish 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 and is otherwise eligible for adjustment of status under this section. 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).

When something is to be established by a preponderance of the evidence it is sufficient that the proof establish that it is probably true. *See Matter of E- M-*, 20 I&N Dec. 77 (Comm. 1989).

Although Service regulations provide an illustrative list of contemporaneous documents that an applicant may submit, the list also permits the submission of affidavits and any other relevant document. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

In an attempt to establish continuous unlawful residence since prior to January 1, 1982, as claimed, the applicant has furnished the following evidence:

1. An affidavit from the applicant dated April 2, 1992 claiming residence in the United States since 1980. The applicant claimed that in 1981 he lived with his uncle and moved to Albuquerque, New Mexico at the end of 1981. He stated that in March of 1982 he was provided a place to live by [REDACTED]. He further stated that because he was a minor in 1981 and 1982 and did not pay rent, he has no rent receipts to support his claim. Although the applicant claimed to have corresponded with his mother via mail, he stated that all such correspondence was either lost or otherwise discarded each time he moved.
2. A notarized letter from [REDACTED] dated March 25, 1992 in which she identified her residence at the time of the affidavit as [REDACTED] El Paso, TX 79901 and claimed to have known the applicant since January of 1980. She claimed to have met him when he was her neighbor living next door to her current residence in Texas.
3. A notarized letter from [REDACTED] dated March 25, 1992 in which she identified her residence at the time of the affidavit as [REDACTED] El Paso, TX 79901 and claimed to have known the applicant since January of 1980. She claimed to have met him when he was her neighbor living next door to her current residence in Texas.
4. A notarized letter from [REDACTED] dated March 27, 1992 in which [REDACTED] claimed that the applicant resided with him from February to October of 1981. He also claimed that the applicant was a landscaping laborer during the nine-month period discussed in the affidavit. Although [REDACTED] identified his address at the time he wrote the notarized letter, it is unclear where he was residing from February to October of 1981.
5. A notarized letter from [REDACTED] dated March 26, 1992, claiming that the applicant arrived to Albuquerque in March of 1982 and soon thereafter became a member of the church where the affiant was a reverend. He claimed that he provided the applicant with a place to live in an apartment at the back of the church in exchange for which the applicant did various repair work.
6. A notarized letter from [REDACTED] dated March 26, 1992 who claimed to have known the applicant since March of 1982. She claimed that she became acquainted with the

applicant because they attended the same church. She further asserted that the applicant performed a number of side jobs at her home and place of business.

7. A notarized letter from [REDACTED] dated March 30, 1992 claiming to have met the applicant in 1983 as a result of common church membership. He stated that the applicant lived in an apartment in back of the church.
8. A letter from [REDACTED] dated March 26, 1992 claiming that the applicant has been a client of his since 1982 buying parts on a "charge basis." The letter contains a business name and address stamp identifying the business as Raceway Auto Parts, Inc.
9. A letter dated March 26, 1992 from [REDACTED], owner of Heath Construction & Landscaping Co., claiming that the applicant worked for him from August 29, 1986 to October 27, 1987.

While 8 C.F.R. § 245a.2(d)(3) sets forth specific criteria which affidavits of residence from employers and organizations should meet to be given substantial evidentiary weight, we look to *Matter of E- M-*, for guidance in determining the appropriate criteria for affidavits from other third party individuals. 20 I&N Dec. 77.

In *Matter of E- M-*, the applicant had established eligibility by submitting (1) the original copy of his Arrival Departure Record (Form I 94), dated August 27, 1981; (2) his passport; (3) affidavits from third party individuals; and (4) an affidavit explaining why additional original documentation is unavailable. *Id.* Furthermore, the Service officer who interviewed that applicant recommended approval of the application, albeit, with reservations and suspicion of fraud. In this case, the interviewing officer recommended denial of the application.

CIS has determined that affidavits from third party individuals may be considered as evidence of continuous residence. *See id.* In ascertaining the evidentiary weight of such affidavits, CIS must determine the basis for the affiant's knowledge of the information to which he/she is attesting; and whether the statement is plausible, credible, and consistent both internally and with the other evidence of record. *Id.*

Following the dicta set forth in *Matter of E- M-*, the affidavits upon which the claim relies must be consistent both internally and with the other evidence of record, plausible, credible, and the affiant must set forth the basis of his/her knowledge for the testimony provided. *Id.* This applicant's documentation falls short of this criteria. Specifically, both the applicant's affidavit and the two notarized letters described in Nos. 2 and 3 above indicate that the applicant was present in the United States since 1980. However, in reviewing the information provided by the applicant in item 33 of the initially submitted Form I-687, the applicant did not identify a residence in the United States prior to 1981.

Further, while [REDACTED] in No. 4 above, discussed the applicant's residence between February and October of 1981, he did not specifically identify the address of such residence. Similarly, while the [REDACTED] and [REDACTED], whose letters are discussed in Nos. 5-7, respectively, all indicated that

the applicant lived in an apartment behind a church, the exact address of the apartment was not identified. As such, the AAO cannot verify any of the claims made in Nos. 4-7 with information previously provided by the applicant in No. 33 of his Form I-687.

Lastly, with regard to the applicant's purchases from Raceway Auto Parts, Inc., the individual who signed the letter did not provide his full name or his position within Raceway Auto Parts, Inc.; nor did he state how he came to know the information provided in the letter.

While there is no specific regulation which governs what third party individual affidavits should contain to be of sufficient probative value, the regulations do set forth the elements which affidavits from organizations are to include. 8 C.F.R. § 245a.2(d)(3). These guidelines provide a basis for a flexible standard of the information which an affidavit should contain in order to render it probative for the purpose of comparison with the other evidence of record.

According to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3), a signed attestation should contain (1) an identification of the applicant by name; (2) the dates of the applicant's continuous residence to which the affiant can personally attest; (3) the address(es) where the applicant resided throughout the period which the affiant has known the applicant; (4) the basis for the affiant's acquaintance with the applicant; (5) the means by which the affiant may be contacted; and, (6) the origin of the information being attested to. 8 C.F.R. § 245a.2(d)(3)(v).

Further, regarding past employment records, that regulation states that letters from employers must be on employer letterhead stationery, if the employer has such stationery, and must include: (1) alien's address at the time of employment; (2) exact period of employment; (3) periods of layoff; (4) duties with the company; (5) whether or not the information was taken from official company records; and (6) where records are located and whether CIS may have access to them. In the present matter, while the applicant provided a letter of employment, the letter does not contain the applicant's address at the time of such employment.

While the standards discussed above are not to be rigidly applied, an application which is lacking in contemporaneous documentation cannot be deemed approvable if considerable periods of claimed continuous residence rely entirely on affidavits which are considerably lacking in such basic and necessary information. In the present matter, the affidavits submitted in support of the application are insufficient, as they do not contain the necessary information.

In light of the applicant's failure to appear for a scheduled interview with a legalization officer, the applicant has failed to establish eligibility for temporary resident status. Additionally, given the overall absence of contemporaneous documentation and the applicant's reliance on affidavits which do not meet basic standards of probative value, it is concluded that the applicant has failed to establish, by a preponderance of evidence, continuous residence for the required period.

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