

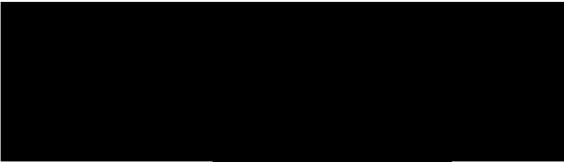


U.S. Citizenship  
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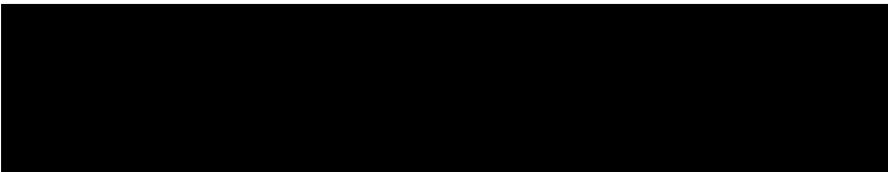
Office: TEXAS SERVICE CENTER

Date: JUN 13 2007

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. 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:** This matter is an application for temporary resident status, which was initially denied on July 9, 1990 by the Director, Southern Regional Processing Facility. The applicant's appeal was subsequently dismissed by the Administrative Appeals Office (AAO). The matter was later reopened and was again reviewed by the AAO where it was remanded back to the service center for further consideration. The Director, Texas Service Center, has since issued a new denial on different grounds of ineligibility. The matter is again before the AAO. The appeal will be dismissed.

The director initially denied the application because the applicant failed to provide the requested court dispositions concerning his arrest for theft on June 27, 1986. The AAO's subsequent dismissal of the appeal was also based on the applicant's failure to comply with prior requests for the final court disposition.

In its later decision, the AAO determined that the applicant had provided the necessary court dispositions and overcame the single ground of excludability. However, the AAO determined that the applicant had not provided sufficient evidence of his continuous residence from prior to January 1, 1982 and remanded the matter to the director for further consideration. In the most recent denial, the director determined that the applicant failed to comply with the request for evidence (RFE) in which he was instructed to submit additional documentation.

On appeal, counsel for the applicant claims that the applicant did not receive the RFE in a timely fashion due to Citizenship and Immigration Service's (CIS) failure to send the notice to the most current address of record. The applicant has since submitted additional documentation, which will be given full consideration in the discussion below.

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).

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).

Evidence to support an application for temporary resident status shall include proof of identity. 8 C.F.R. § 245a.2(d). In order to establish identity, an applicant may submit, in order of preference, (i) Passport; (ii) Birth certificate; (iii) any national identity document from the alien's country of origin bearing photo and fingerprint; (iv) Driver's license or similar document issued by state if it contains a photo; (v) Baptismal Record/Marriage Certificate; or (vi) Affidavits. 8 C.F.R. § 245a.2(d)(1).

An applicant for temporary resident status must submit to an examination by a designated civil surgeon at no expense to the government. The designated civil surgeon must report on the findings of the mental and physical condition of the applicant and the determination of the alien's immunization status. Results of the medical examination must be presented to the Service at the time of interview and must be incorporated into the record. 8 C.F.R. § 245a.2(i). According to outstanding Service instructions, the results of any medical examination given on or after December 1, 1987 must include the results of a serologic test for HIV infection.

In the director's decision, the applicant was informed that the application could not be approved because he had failed to comply with the requirement that he provide the following documentation: 1) evidence of residence from prior to January 1, 1982 to May 5, 1988; 2) evidence of common identify and additional proof of identify; 3) a list of the applicant's visit(s), if any, to a foreign country during the relevant time period; 4) a translation of the applicant's birth certificate; 5) two photographs of the applicant; 6) a new medical Form I-693; 7) evidence of financial responsibility; and 8) final court dispositions for all of the applicant's arrests. Although given ample opportunities to do so, the applicant has failed to comply with Service requirements.

The applicant has since submitted additional documentation to satisfy the requirements listed in nos. 3-8. However, in reviewing the evidence submitted to establish the applicant's continuous residence, the AAO finds that the applicant failed to meet the burden of proving by a preponderance of evidence that he has continuously resided in an unlawful status in the United States from prior to January 1, 1982 through the date of filing, and that he is admissible to the United States under the provisions of section 245A of the Act, 8 U.S.C. 1255a, and is otherwise eligible for adjustment of status. 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 the 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 a single affidavit dated March 22, 2006 and signed by [REDACTED] the affiant, who claims that the petitioner resided with her at [REDACTED] from December of 1981 to November of 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.

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. Furthermore, the Service officer who interviewed that applicant recommended approval of the application, albeit, with reservations and suspicion of fraud. 20 I&N Dec. 77. In this case, the interviewing officer

recommended denial of the application. The officer noted that the applicant presented no actual proof of residence or proof of employment at the time of the interview.

In reviewing the record in its entirety, the AAO notes that this applicant has submitted no contemporaneous documentation to establish presence in the U.S. for the time he claimed to have commenced residing in the U.S. through May 4, 1988, the date the applicant signed his Form I-687. The AAO further notes that the information provided by the affiant is inconsistent with the information provided by the applicant in his Form I-687. Specifically, while [REDACTED] stated that the applicant resided at [REDACTED] from December of 1981 to November of 1987, the applicant claimed to have resided at that address from July of 1981 to August of 1985. The applicant indicated that from August of 1985 to July of 1986, he resided at [REDACTED] and moved yet again prior to November of 1987, contrary to [REDACTED] statements. In light of the fact that the applicant claims to have continuously resided in the U.S. since prior to January 1, 1982, his submission of a single affidavit from a third party whose claims are inconsistent with the applicant's own claims regarding his residential address during the time in question raises serious doubts regarding the credibility of the claim.

As stated above, the inference to be drawn from the documentation provided shall depend on the extent of the documentation. The minimal evidence furnished cannot be considered extensive, and in such cases a negative inference regarding the documentation may be made as stated in 8 C.F.R. § 245a.2(d)(5).

CIS has determined that affidavits from third party individuals may be considered as evidence of continuous residence. *See Matter of E- M-*, 20 I&N Dec. 77. In ascertaining the evidentiary weight of such affidavits, CIS must determine the basis for the affiant's knowledge of the information to which 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 above factors would not necessarily be fatal to the applicant's claim, if the affidavits upon which the claim relies are consistent both internally and with the other evidence of record, plausible, credible, and if the affiant sets forth the basis of her knowledge for the testimony provided. *Id.* However, this applicant's documentation also falls short of these criteria.

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).

While these standards 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.

The affidavit submitted in support of this application falls far short of meeting the above criteria. As discussed above, the applicant's entire claim of continued residence since prior to January 1, 1982 rests on a single affidavit, which is considerably inconsistent with information provided by the applicant himself.

Thus, given the absence of contemporaneous documentation, the failure of the applicant's testimony to credibly support the claim, and the 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.

Additionally, the applicant is ineligible for temporary residence because he has been convicted of the following three misdemeanor offenses:

1. On August 26, 1986, the applicant pled guilty to theft, a Class A misdemeanor. The applicant was sentenced to 120 days in the Harris County Jail. Harris County Criminal Court docket [REDACTED]
2. On August 11, 1999, the applicant was convicted of failing to stop and give information, a Class B misdemeanor, and driving with a suspended license, a Class A misdemeanor. Harris County Criminal Court docket [REDACTED] and [REDACTED]

The temporary resident status of an alien who has been convicted of a felony or three or more misdemeanors in the United States may be terminated at any time. 8 C.F.R. § 245a.2(u)(1)(iii). Thus, the applicant is no longer eligible for temporary residence based on his conviction of the three misdemeanor offenses described above.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9<sup>th</sup> Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a de novo basis).

The applicant is ineligible for temporary residence for the above stated reasons, with each considered as an independent and alternative basis for denial.

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