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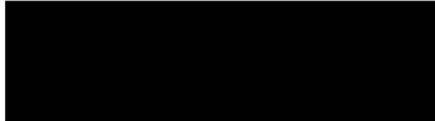
U.S. Department of Homeland Security
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U.S. Citizenship
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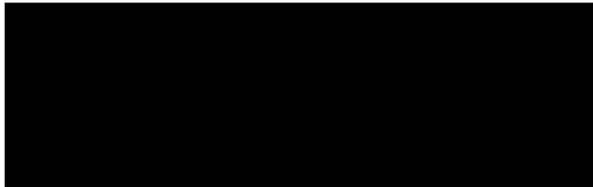
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FILE: [REDACTED] Office: SAN DIEGO Date: **AUG 15 2008**
XSD-88-182-01059

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: 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for Temporary Resident Status pursuant to Section 245A of the Immigration and Nationality Act (Act) as amended by the Immigration Reform and Control Act of 1986, 8 U.S.C. § 1255a, was denied by the Director of the California Service Center on June 23, 1993. The applicant appealed that decision on July 8, 1993. Upon review of the matter, the Administrative Appeals Office remanded the application to the Service Center for further action and consideration on April 12, 1996. The District Director, San Diego then denied the application. That decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant submitted a Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (Act). The director determined that the applicant had not established by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status for the duration of the requisite period. Specifically, in his Notice of Intent to Deny (NOID), the director stated that the applicant did not submit sufficient evidence to prove that he first entered the United States before January 1, 1982. The director granted the applicant 30 days within which to submit additional evidence in support of his application. The applicant failed to submit additional evidence in response to the director's NOID. The director determined the applicant was not eligible to adjust to temporary resident status pursuant to the CSS/Newman Settlement Agreements, and therefore, he denied the application.

On appeal, the applicant asserts that he has resided in the United States since 1986. He states that he worked using his brother's name since that time. He states that he provided his records rather than those of his brother when he attempted to apply for legalization.

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 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).

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 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 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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record indicates that the applicant submitted a Form I-687 application to Immigration and Naturalization Service (INS), now Citizenship and Immigration Services (CIS) during the original legalization filing period on May 3, 1988. At parts #2, #3 and #4, the applicant indicated that his name was [REDACTED] that his was born on [REDACTED] and that he has never been known by any other name. At parts #21 and #22, he indicated that his mother's name was [REDACTED] and his father's name was [REDACTED]. At part #32, the applicant indicated that he had 10 siblings and that one of his brothers is named [REDACTED] with the date of birth of [REDACTED]. He indicated that at the time he signed this Form I-687 [REDACTED] was residing in San Francisco de Rincón, Mexico. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant indicated his addresses in the United States since he entered were all in San Diego as follows: [REDACTED] December 1981 until July 1984; [REDACTED] from July 1984 until January 1986; [REDACTED] from January 1986 until March 1987 and [REDACTED] from March 1987 until the date he submitted his Form I-687. At part #34 of this application where the applicant was asked to list all of his memberships with associations, the applicant indicated that he was a member of the California Homemaker's Association from March 1986 until he submitted his Form I-687. At part #35 where the applicant was asked to list all of his absences from the United States, he indicated that he had never been absent from the United States. At part #36, where the applicant was asked to list all of his employment in the United States since he first entered, he stated that he was employed as a gardener for [REDACTED] from February 1983 until December 1985 and then as a dishwasher at [REDACTED] from April 1986 until the date he submitted his Form I-687.

The record also contains a sworn statement that was taken from the applicant on September 24, 2003. In this statement, the applicant stated that his actual name was [REDACTED] but that he also used the name [REDACTED]. He stated that [REDACTED] is actually his brother and that he used his brother's name beginning on April 14, 1986. He stated that he also used his brother's birth certificate, baptismal certificate and social security number, as well as using his biographic information and name to obtain a driver's license. He asserts that he first entered the United States on December 20, 1981 and that the only other time he left the United States was when he left for a period of three days in 1985.

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. 8 C.F.R. § 245a.2(d)(5). To meet his burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony. 8 C.F.R. § 245a.2(d)(6). The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that an applicant may submit to establish proof of continuous residence in the United States during the requisite period. This list includes: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts or letters. An applicant may also submit any other relevant document pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The applicant submitted the following evidence with his Form I-687 that is relevant to his residence in the United States during the requisite period:

- A translation of a birth certificate that indicates that [REDACTED] was born on [REDACTED] in San Francisco Del Rincon in Guanajuato, Mexico to [REDACTED]
- An affidavit from [REDACTED] that was notarized on May 26, 1988. The affiant states that he and [REDACTED] resided together on J Street in San Diego from December 1981 until 1983. He states that in 1983 he and the applicant moved to 20th Street where they lived together for one year. He states that he is still in contact with [REDACTED] because they were working together at [REDACTED] restaurant in San Diego at the time the affiant submitted his affidavit.
- An employment affidavit from [REDACTED] that was notarized on May 7, 1988. The affiant states that he employed [REDACTED] continuously from February 1983 until December 1985.
- An employment letter from [REDACTED] that is dated May 11, 1988. This letter is signed by [REDACTED], who indicates that she is the bookkeeper. The letter states that the [REDACTED] was employed full time as a dishwasher at [REDACTED] in April 1986.

- An affidavit from [REDACTED] that was notarized on November 4, 1988. The affiant states that he has personal knowledge that [REDACTED] resided in San Diego, California from December 1981 until the date he signed his affidavit. He states that he met [REDACTED] through a mutual friend and that they continue to be friends. However, he does not state when or where he first met [REDACTED] or specify the frequency with which he saw the applicant during the requisite period.

A letter from the Western Service Workers Association California Homemakers Association in San Diego, California. This letter is dated April 29, 1988 and is signed by [REDACTED] who indicates that she is the operations manager for the California Homemakers Association. The letter states that [REDACTED] has been a member of this association since March 1985. She states that [REDACTED] was a participant in an English class held in 1986 and has been a volunteer with the association since that time.

The director of the California Service Center denied the application on June 23, 1993 because he determined that the applicant had been convicted of a felony. This determination was made after reviewing the record bearing the number [REDACTED] and concluding that this applicant and the individual with that alien registration number were one and the same person.

The applicant appealed the decision of the California Service Center on July 8, 1993. In his appeal, he asserted that he was the victim of identity theft. He stated that he submitted his fingerprints to the San Diego Sheriff's Department and they found that he was not convicted of any crimes. In support of his appeal, the applicant submitted a letter from J [REDACTED] that is dated June 30, 1993. This letter states that the San Diego Sheriff's Department fingerprinted the applicant and it was determined that his fingerprints did not match those of the individual using the name [REDACTED] who had committed crimes and was in that Sheriff's system. The letter states that this indicates that the applicant was the victim of identity theft.

On April 12, 1996, the AAO reviewed the records bearing the alien registration numbers [REDACTED] and determined that though both individuals claimed to be born on September 25, 1960 and used the social security number [REDACTED] these alien registration numbers did not belong to the same individual. The AAO noted that immigration file # [REDACTED] belonged to an individual named [REDACTED] and the record under [REDACTED] belonged to Jose de [REDACTED]. The AAO stated that in spite of the numerous similarities between the two individuals, it was clear that [REDACTED] were not the same person. Therefore, the AAO found that the criminal record that formed the basis of the director's decision had been overcome. Therefore, the AAO remanded the matter to the California Service Center for further action and consideration. However, in doing so, the AAO noted that documents in the applicant's record failed to allow the applicant to establish that he entered the United States on a date before January 1, 1982 and then maintained continuous residence in the United States for the duration of the requisite period.

On September 24, 2003 the applicant was interviewed by a CIS officer. During this interview the applicant submitted a signed, sworn statement that he had previously and knowingly used the birth certificate, and the biographical data of his brother, [REDACTED], when he filed his Form I-687 application. During this interview, the applicant stated that his actual name is Pedro

and that his actual date of birth was [REDACTED]. The applicant also submitted a birth certificate bearing the name Pedro [REDACTED] and an identification card from the National Secretary of Defense in Mexico bearing this name, a photograph and a fingerprint. This identification card indicates that the [REDACTED] completed his military training in Guanajuato, Mexico on December 11, 1982.

The director of the San Diego District Office issued a NOID to the applicant on September 12, 2006. In his NOID, the director noted that the regulation at 8 C.F.R. § 245a.2(b)(1) states in pertinent part that to be eligible to adjust status to that of a temporary resident, applicants must establish that they entered the United States on a date prior to January 1, 1982. The director indicated that documents in the record, including the identification card from the National Secretary of Defense in Mexico, show that the applicant did not enter the United States before January 1, 1982. The director granted the applicant 30 days within which to submit additional evidence in support of his application.

The record indicates that the applicant did not submit additional evidence in support of his application in response to the director's NOID.

The director denied the application on April 20, 2007. In doing so, the director indicated that because the applicant failed to submit additional evidence for consideration in response to the NOID, he did not overcome the reasons for the denial of his application as stated in the NOID.

On appeal, the applicant states that his name is [REDACTED] and that he has resided in the United States since 1986. He asserts that he worked using his brother's name since that time. He goes on to state that he initially submitted his own documents and not his brother's with his Form I-687. He states that his brother allowed him to use the name [REDACTED] as his own name and asserts that he qualifies for amnesty because he has resided in the United States since 1986.

The AAO has reviewed documents in the record and has found that the applicant has failed to meet his burden of proof. The record is not consistent regarding when the applicant first entered the United States. He has stated on appeal that he has resided in the United States since 1986. The applicant has also stated in a sworn statement taken on September 24, 2003 that he first entered the United States on December 20, 1981 and was not absent from the United States until 1985. However, he has submitted an identity card from the Mexican National Ministry of Defense that indicates that he graduated from military training in Guanajuato, Mexico in December of 1982. This indicates that the applicant was in Mexico on that date. These discrepancies cause doubt to be cast on whether the applicant first entered the United States on a date before January 1, 1982. Therefore, because he did not satisfy his burden of proving that he entered the United States before that date, he is not eligible to adjust status to that of a temporary resident pursuant to Section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2).

Further, the applicant has submitted documents including birth certificates from both [REDACTED] [REDACTED], claiming that he was each individual. He continued to claim that he was actually [REDACTED] and was the victim of identity theft in his 1993 appeal to the AAO and did not state that he had ever used the name [REDACTED] until 2003. This

casts doubt on statements made by the applicant in support of his application generally, which causes the AAO to question the credibility of the applicant's entire testimony.

Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. 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. 582, 591-92 (BIA 1988).

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, as well as his testimony on appeal that he first entered the United States in 1986 and the inconsistencies and contradictions noted in the record, seriously detract from the credibility of his claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the inconsistencies in the record and the lack of credible supporting documentation, it is concluded that he has failed to establish by a preponderance of the evidence that he has 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.

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