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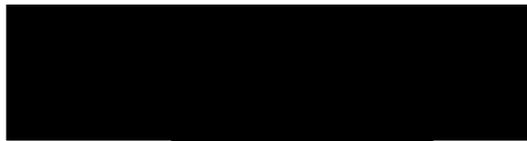
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
and Immigration
Services

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FILE: [Redacted]
XHP 88 519 6069

Office: CALIFORNIA SERVICE CENTER Date: **FEB 08 2008**

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. The file has 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, Western Service Center. The application is now on appeal before the Administrative Appeals Office (AAO). 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 (the Act), 8 U.S.C. § 1255a, on May 4, 1988.

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 Director denied the application on June 22, 1992, on the ground that the applicant was statutorily ineligible for the benefit sought because she had not established that she entered the United States before January 1, 1982. The director cited the applicant's admission under oath at her interview (on October 31, 1988) at the Huntington Park Legalization Office that her first entry into the United States was after January 2, 1982, and her claim of residence in the United States since April 1982.¹

The applicant filed a timely appeal, and asserts that she has resided in the United States since 1980. The applicant denies that she admitted to the interviewing officer that she first entered the United States in April 1982, and cites documentation submitted with her appeal as evidence of her presence in the United States since November 1, 1980.

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).

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

¹ On her Form I-687 the applicant claims to have last entered the United States on November 27, 1982.

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 credibility of an affidavit may be assessed by taking into account such factors as whether the affiant provided a copy of a recognized identity card, such as a driver's license; whether the affiant provided some proof that he or she was present in the United States during the requisite period; and whether the affiant provided a valid telephone number. 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.

As evidence of her residence in the United States during the 1980s, the applicant submitted the following evidence with her Form I-687 in May 1988:

- Four rental receipt forms with handwritten entries dated January 20, 1982; February 20, 1982; March 20, 1982; and December 20, 1982, stating that the applicant paid \$250 monthly rent for an apartment at [REDACTED] in Los Angeles, California, from January 20 to April 20 1982, and from December 20, 1982 to January 20, 1983.
- An affidavit from [REDACTED], dated March 16, 1988, stating that she shared an apartment with the applicant at [REDACTED] in Cudahy, California, from April 1982 through September 1983.
- Two letters from individuals in Mexico – one with an envelope addressed to the applicant at [REDACTED] in Los Angeles and postmarked in December 1984; the other with an envelope addressed to the applicant at [REDACTED] in Los Angeles and postmarked in March 1987.
- A statement from [REDACTED] indicating that a [REDACTED]² was employed by Nivea of California from July 29, 1983 to December 23, 1983.

² The applicant indicated on her Form I-687 that [REDACTED] is another name she has used.

- An earnings statement from [REDACTED] of Los Angeles, issued to [REDACTED] on February 11, 1984.
- A declaration of [REDACTED], dated February 12, 1988, that [REDACTED] was employed by World Fashion Products from October 30, 1985 until January 1987.
- An earnings statement issued to the applicant by World Fashion, Inc. in Los Angeles, California, on October 21, 1988.

None of the foregoing documentation, even if accepted as credible, demonstrates that the applicant resided in the United States prior to January 20, 1982. Moreover, the rental receipts from January to March 2002 conflict with the applicant's admission at her interview on October 31, 1988, that her residence in the United States dated from April 1982. Accordingly, the Director denied the application for temporary resident status on June 22, 1992, because the applicant had failed to establish her continuous unlawful residence in the United States since before January 1, 1982.

On appeal the applicant submitted photocopies of the following additional documentation as evidence of her residence in the United States during the 1980s:

- A fill-in-the-blank affidavit from [REDACTED] of Los Angeles, dated July 8, 1992, asserting that she knows the applicant lived in various California communities during the 1980s, including Balwin Park from November 1, 1980 to March 1, 1981; Lynwood from March 1, 1981 to June 11, 1981; Los Angeles from June 11, 1981 to November 10, 1982; Maywood from November 10, 1982 to February 6, 1984; and Cudahy from February 6, 1984 to October 7, 1990.
- A birth certificate for [REDACTED], whom the applicant identifies as her daughter, who was born in Los Angeles, California on April 20, 1981.
- A baptismal certificate for [REDACTED] issued in Los Angeles on February 20, 1982.
- A school immunization record for [REDACTED] with entries dated June 1981, August 1984, August 1985, August 1986, and September 1986.
- Two charge cards in the applicant's name with validity periods of October 1981 to October 1983 and March 1982 to March 1984.
- A utility bill mailed to the applicant at [REDACTED] in Los Angeles on March 26, 1985.
- Statements from the owner and an employee of World Fashion, Inc. in Los Angeles, dated November 30, 1989, indicating that the applicant worked for the company under the alias of [REDACTED] from October 30, 1985 until April 1988, and since then in her own name.

While the documentation submitted on appeal includes some evidence that the applicant may have been present in the United States prior to January 1, 1982, the applicant has not explained how these materials square with her previous statements that she entered the United States and established residence in this country after January 1, 1982. Though the applicant denies she made any such statement to the interviewing officer on October 31, 1988, the Director specifically cites an admission by the applicant at the interview that she did not enter the United States until 1982 and that she had resided in the country since April 1982. Further confusing the matter, the applicant stated on her Form I-687 that she last entered the United States on November 27, 1982. The evidence of record also contains discrepancies with respect to the applicant's residential addresses at particular times during the 1980s. For example, the address on the rental receipt from December 1982 conflicts with information provided in the affidavits of [REDACTED] and [REDACTED], each of whom identified a different address for the applicant at that time in a different jurisdiction. In addition, while the first letter envelope from Mexico postmarked in December 1984, the utility bill dated March 26, 1985, and the second letter envelope from Mexico postmarked in March 1987 each identified a different address for the applicant in Los Angeles, and the Form I-687 she filed in May 1988 provided yet another address in South Gate, California – all of these addresses conflict with the information provided in [REDACTED]'s affidavit that the applicant resided during that entire time period in Cudahy, California.

Doubt cast on any aspect of the applicant's evidence reflects on the reliability of the petitioner's remaining evidence. It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies will not suffice without competent evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92, (BIA 1988). No such competent evidence has been submitted by the applicant to reconcile the foregoing inconsistencies with respect to her date of entry into the United States and the commencement of her unlawful residence in the country, or the conflicting information about her addresses in the United States during the years 1982-1988.

The AAO concludes that the evidence of record is insufficient to support a conclusion that the applicant entered the United States before January 1, 1982 and resided continuously in the United States until the date she filed her application for temporary resident status on May 4, 1988, as required under section 245A(a)(2) of the Act. Accordingly, the decision of the CSC Director denying the application for temporary resident status will be affirmed.

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