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U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE:

XSA-88-508-2031

Office: LOS ANGELES

Date: JUL 31 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:

[Redacted]

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 California Service Center. On appeal, the former Legalization Appeals Unit (LAU) remanded the case for further action. The decision is now before the Administrative Appeals Office (AAO) on appeal of the Los Angeles District Director's subsequent adverse decision. 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. The director denied the application, finding that the applicant had not met his burden of proof and was, therefore, not eligible to adjust to temporary resident status.

On appeal, the applicant asserts that the Citizenship and Immigration Service (CIS) did not properly weigh the evidence submitted.

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 petitioner 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, 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 or her 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 shows that on May 4, 1988, the applicant filed a Form I-687 application to the former Immigration and Naturalization Service (now known as Citizenship and Immigration Services (CIS)). 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 showed his addresses in the United States to be in Santa Ana, California, from September 1981 to April 1985; Paramount, California from April 1985 until January 1986; Los Angeles, California from January 1986 until December 1987; and in Santa Ana, California from December 1987 until the date of filing.

In support of his claims of entry prior to January 1, 1982 and continuous residence in the United States from that date until the date of filing, the applicant submitted the following documentation:

An employment verification letter from [REDACTED] in which the declarant stated that the applicant worked for him doing construction work from September 1981 until July 1983. The statement is not on company letterhead, and it is not notarized. It also fails to meet certain regulatory standards set forth at 8 C.F.R. § 245a.2(d)(3)(i), which provides that letters from employers must include the applicant’s address at the time of employment; exact period of employment; whether the information was taken from official company records and where records are located and whether CIS may have access to the records; if records are unavailable, an affidavit form-letter stating that the employment records are unavailable may be accepted which shall be signed, attested to by the employer under penalty of perjury and shall state the employer’s willingness to come forward and give testimony if requested.

The statement by [REDACTED] does not include much of the required information and can be afforded minimal weight as evidence of the applicant’s residence in the United States for the duration of the requisite period. Furthermore, the applicant did not identify this

employer on his Form I-687. Additionally, [REDACTED] submitted a second letter, dated December 2, 2004, in which he indicated that he first met the applicant in 1981 and that they worked together hanging drywall for Orange County Drywall. He further indicates that in 1981 he was living at [REDACTED] and that “for a few years [REDACTED] lived with us.” The statements by [REDACTED] do provide some evidence of the applicant’s entry to the United States in 1981 and his residence “for a few years” following 1981. Accordingly, they will be given some weight.

- An employment verification letter from Golden West Frame Co. Inc. in which the declarant stated that the applicant worked for the company from January 1984 until June 1984. While the statement is on company letterhead, it is not notarized. Like the letter above, this letter also fails to meet certain regulatory standards set forth at 8 C.F.R. § 245a.2(d)(3)(i). Since the statement by [REDACTED] does not include much of the required information, it can be afforded minimal weight as evidence of the applicant’s residence in the United States for the duration of the requisite period.
- An employment verification letter from Cal Tech Cabinets in which the declarant stated that the applicant was employed by the company from July 1984 until January 1985. The declarant went on to explain that the information was taken from official company records, where records are located and that CIS may have access to the records if needed. While the statement does not comport with all of the requirements of 8 C.F.R. § 245a.2(d)(3)(i), it does provide some evidence of the applicant’s continuous residency in the United States from July 1984 until January 1985.
- A letter from [REDACTED] of Orco Interiors of Santa Ana, California. The declarant indicated that the applicant worked for Orco from March 1985 until December 1990. No other relevant information is provided. Like the letter above, this letter also fails to meet certain regulatory standards set forth at 8 C.F.R. § 245a.2(d)(3)(i). Since the statement by [REDACTED] does not include much of the required information, it can be afforded minimal weight as evidence of the applicant’s residence in the United States for the duration of the requisite period.
- A form affidavit from [REDACTED], of Pomona, California. [REDACTED] indicated that the applicant’s cousin is a friend and that “he has been living in this country since 1981.” Although [REDACTED] confirmed that she met the applicant in the United States in 1981, she did not indicate that she has any direct, personal knowledge of his continuous residence in this country for the duration of the requisite period. She offered no specific information regarding how frequently and under what circumstances she saw the applicant during the relevant period, nor did she provide any relevant details regarding the applicant’s residence in the United States beyond her initial meeting with him. The lack of detail in her statement is significant, and its probative value is limited.

- A letter from [REDACTED] who indicated that she has been acquainted with the applicant and has “knowledge of his residence since October 1981 in this country.” She also stated that the applicant lived with her family from April 1985 until January 1986. This is consistent with the addresses that the applicant provided in his Form I-687 application. However, like the declarant above, [REDACTED] did not indicate that she has any direct, personal knowledge of his continuous residence in this country for the duration of the requisite period. She offered no specific information regarding how frequently and under what circumstances she saw the applicant during the relevant period, nor did she provide any relevant details regarding the applicant's residence in the United States beyond her stating that he lived with her for an eight month period. Her statements will be given some weight.
- A letter from [REDACTED] who indicated that he has been acquainted with the applicant and since October 15, 1981. He also stated that the applicant lived with his family from January 1986 through December 1987. The applicant did not list [REDACTED] California on his application and the declarant did not provide any other address in his declaration. Additionally, like the declarant's above, [REDACTED] did not indicate that he has any direct, personal knowledge of his continuous residence in this country for the duration of the requisite period. While he stated that he saw the applicant two times per month, he offered no specific information regarding the circumstances of their meetings, nor did he provide any relevant details regarding the applicant's residence in the United States beyond stating that the applicant lived with him for an 11 month period. Accordingly, his statements will be given some weight.
- Finally, the record contains a form affidavit signed by [REDACTED] of Pomona, California. The affiant stated that the applicant lived with her from December 1987 until August 1988 at [REDACTED] California. She indicated that they shared expenses however the bills were in her name and therefore, no utility bills or rental receipts are available. Her statements are consistent with the address provided by the applicant and will be given some weight.

It is noted that the only employer that the applicant provided on his Form I-687 application was Orco Interiors of Santa Ana, California. This further detracts from the credibility of the other employment verification letters.

While the record does contain some credible evidence of the applicant's residence in the United States in 1984, 1985 and 1986, the applicant has not provided any evidence of residence in the United States for the period 1981 until 1984 except the statements from [REDACTED] and [REDACTED]. The deficiencies in this evidence is noted above. In addition, the other evidence submitted lacks credibility and probative value for the reasons noted.

While an applicant's failure to provide evidence other than affidavits shall not be the sole basis for finding that he or she failed to meet the continuous residency requirements, 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 relevant and probative information. As discussed above, the affiants' statements are significantly lacking in detail and do not establish that the affiants actually had personal knowledge of the events and circumstances of the applicant's residence in the United States. Overall, the affidavits provided are so deficient in detail that they can be given little significant probative value. Further, this applicant has provided no contemporaneous evidence of residence in the United States relating to requisite period, and he has submitted inconsistent testimony and evidence pertaining to his employment in the United States during the requisite period.

As is stated above, 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). The applicant has been given the opportunity to satisfy his burden of proof with a broad range of evidence pursuant to 8 C.F.R. § 245a.2(d)(3).

The absence of sufficiently detailed documentation to corroborate the applicant’s claim of continuous residence for the entire requisite period seriously detracts from the credibility of this 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 applicant's reliance upon affidavits with minimal probative value, some of which are inconsistent with the applicant’s Form I-687, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application 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.