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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS2090
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U.S. Citizenship
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FILE: [REDACTED] Office: LOS ANGELES Date: AUG 06 2009
XLA 88 013 3047

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. 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.

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The applicant's status as a temporary resident was terminated by the Director, Los Angeles. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

In his decision, the director states that the applicant was granted lawful temporary residence on March 15, 1988.¹ During the applicant's interview on May 1, 2007, the applicant stated verbally and in writing that she first entered the United States in 1987 without inspection. Therefore, the director determined that the applicant failed to establish continuous residence since prior to January 1, 1982 and through the requisite period. On May 2, 2007, the director issued a Notice of Intent to Terminate (NOIT) and granted the applicant 30 days in which to submit evidence in rebuttal to the proposed termination of her temporary resident status. Based on the evidence submitted, the applicant failed to overcome the reasons stated in the NOIT. Therefore, the director determined that the applicant was not eligible for status as a temporary resident pursuant to Section 245A of the Act. The applicant filed a timely appeal.

Section 245A(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255a(b)(2) states in pertinent part that the Act provides for termination of temporary residence status granted to an alien if it appears to the Attorney General [now Secretary, Department of Homeland Security] that the alien was in fact not eligible for such status, or the alien commits an act that makes the alien inadmissible to the United States as an immigrant, or the alien is convicted of any felony or three or more misdemeanors committed in the United States. *See also* 8 C.F.R. § 245a.4(b)(20)(i)(A).

United States Citizenship and Immigration Services (USCIS) records reveal that the applicant filed Form I-698, Application to Adjust Status from Temporary to Permanent Resident, on May 29, 1991 after being granted lawful temporary permanent residence on March 15, 1988 under section 245A of the Act. In the interview conducted May 1, 2007, the applicant's sworn statement and the USCIS adjudication officer's notes revealed that the applicant claimed to have first entered the United States without inspection with her son, Juan, in 1987.²

On May 2, 2007, the director issued a Notice to Intent to Terminate (NOIT) in accordance with the regulations at 8 C. F. R. § 245a.2(u)(2)(i). On May 29, 2007, the director received the applicant's rebuttal to the NOIT in which the applicant stated that she was living with her brother in 1981 and for that reason she does not have evidence of continuous presence in the United States since prior to January 1, 1982 through the requisite period. The applicant provided evidence all of which dated post 1988. As the applicant failed to overcome the reasons for the director's decision, the director issued a notice of termination (NOT) on August 29, 2007. In the NOT, the director determined that the applicant was ineligible for temporary residence under section 245A of the Act and terminated the applicant's temporary residence.

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

¹ The record does not reflect that the Form I-687 was ever adjudicated.

² The Form I-698 remains adjudicated. Because the appeal will be dismissed, the Form I-698 application to adjust status to permanent resident will be moot.

November 6, 1986. Section 245(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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

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.

The issue in this proceeding is whether the applicant (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. On appeal, the applicant submitted three affidavits to establish her initial entry and residence in the United States during the requisite period. [REDACTED] states in her affidavit that she has known the applicant since 1981. [REDACTED] claims that she met the applicant through her sister, [REDACTED] at [REDACTED] home and since then, they became good friends visiting each other and have been in constant communication. The affiant states that she and [REDACTED] were neighbors in East Los Angeles and attests to the applicant’s good moral character. The affiant provides no other information about the applicant.

states that his brother, has been financially supporting the applicant during the years 1981 through 1988. also claims in his statement that from April 1982 to October 1990 his sister, depended on him economically. Neither brother provides other information about the applicant.

Upon review, the documents do not include sufficient detailed information about the applicant's continuous residency in the United States since before January 1, 1982 and throughout the requisite period. None of the witnesses supplies any details about the applicant's life and their interaction with each other, her son, her employment, shared experiences and the date and manner she entered the United States. The affiants fail to indicate any other details that would lend credence to their claimed acquaintance with the applicant and the applicant's residence in the United States during the requisite period.

The affiants do not provide concrete information, specific to the applicant and generated by the asserted associations with her, which would reflect and corroborate the extent of those associations and demonstrate that they are a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the declarations. To be considered probative and credible, witness affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Therefore, the affidavits have little probative value.

Therefore, based upon the foregoing, the applicant is ineligible for temporary residence because she failed to establish by a preponderance of the evidence that she entered the United States before January 1, 1982 and 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*. Any temporary resident status previously granted to the applicant is terminated.

Beyond the decision of the director, the applicant was arrested on September 23, 1994 and was subsequently convicted. The record does not contain a final court disposition indicating the resolution of this arrest. Therefore, the applicant has not proved that she is admissible to the United States. For this reason as well, the applicant is not eligible for permanent residence in the United States.

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