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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529 - 2090

**U.S. Citizenship
and Immigration
Services**

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[REDACTED]

FILE: [REDACTED]
XLA-88-081-04097

Office: LOS ANGELES

Date: **AUG 1 0 2009**

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. 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.

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The termination of the applicant's temporary resident status by the director of the Los Angeles office is 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), as amended. The applicant was granted temporary residence on April 17, 1989 by the Western Regional Processing Facility, without a field office or district office interview. On October 28, 1992 the director terminated the applicant's temporary residence because the applicant was not interviewed by an immigration officer. According to 8 C.F.R. § 245a.2(j), each applicant for temporary resident status shall be interviewed by an immigration officer, except that the interview may be waived for a child under 14, or when it is impractical because of the health or advanced age of the applicant. The applicant was subsequently interviewed on May 1, 2007.

The applicant has not submitted any additional evidence on appeal. The AAO has reviewed all of the evidence, and has made a *de novo* decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the evidence.¹

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).

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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony, and the sufficiency of all evidence produced

¹ The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also*, *Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has long been recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n.9 (2d Cir. 1989).

by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

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.* 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 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. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *Matter of Ho*, 19 I & N Dec. 582, 591-592 (BIA).

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. The documentation that the applicant submits in support of her claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists of a California state identification card, two letters, a W-2 form and several federal income tax returns. The AAO has reviewed each document in its entirety to determine the applicant's eligibility. Some of the evidence submitted indicates that the applicant resided in the United States after May 4, 1988; however, because evidence of residence after May 4, 1988 is not probative of residence during the requisite time period, it shall not be discussed.

The applicant has submitted a copy of a W-2 form for the year 1981 for applicant's earnings in that year with Thrifty Oil Company. The applicant also submitted a copy of a federal income tax return for the year 1981 which lists the same amount of earnings as is listed on the W-2. On the I-687

application the applicant lists employment as a cashier with Shell Gas Station/Thrifty Oil in Downey, California from November 1980 until February 1981, and employment with a Pick & Save store in Gardena, California from June 1983 until at least March 1988. However, the information contained on the W-2 form and the I-687 application is inconsistent with the testimony of the applicant.² At the time of her interview on May 1, 2007, and in a written statement dated May 25, 2007, the applicant states that she first entered the United States on October 30, 1981, and that she worked as a babysitter for the first three years after she entered the United States. In her written statement, the applicant denies ever having worked for a Shell gas station. Due to these inconsistencies, the copies of the 1981 W-2 form and the federal income tax return have no probative value.

The applicant also submitted a letter from [REDACTED], a financial service associate with Great Western Savings Bank, stating that the applicant opened a savings account on June 21, 1983. However, the letter does not give an address either for the bank or for the applicant.

The record contains copies of 1984, 1985 and 1986 federal income tax returns, as well as a copy of a W-2 form for 1986. Although these documents are evidence in support of the applicant's residence in the United States in 1984, 1985 and 1986, they do not establish the applicant's continuous residence in the United States for the duration of the requisite period.³

Finally, the applicant has submitted an employment verification letter from [REDACTED] assistant personnel director from Pic "n" Save in Carson, California stating that the applicant has been employed with the store since June 22, 1983. However, the information contained in this letter contradicts the information provided by the applicant at the time of her interview regarding the I-687 application, and the information contained in the written statement of the applicant dated May 25, 2007, where the applicant stated that she began working for the store in 1985. Due to these inconsistencies, the employment verification letter from [REDACTED] has minimal probative value.

Furthermore, the employment verification letter of [REDACTED] fails to conform to the regulatory standards for letters from employers. The regulation at 8 C.F.R. § 245a.2(d)(3)(i) provides that letters from employers must include: (A) Alien's address at the time of employment; (B) Exact period of employment; (C) Periods of layoff; (D) Duties with the company; (E) Whether or not the information was taken from official company records; and (F) Where records are located and whether the Service may have access to the records. If the records are unavailable, an affidavit-form letter stating that the alien's employment records are unavailable and why such records are unavailable may be accepted in lieu of subsections (E) and (F). The employment verification letter fails to declare whether the information was taken from company records, to identify the location of

² In addition, the information contained in the 1981 federal income tax return is inconsistent with the information in the I-687 application. The federal income tax return lists an address for the applicant of [REDACTED] in Los Angeles, California and a dependent child named [REDACTED]. On the I-687 application the applicant does not list a residence or [REDACTED] and does not list any children.

³ The 1984, 1985 and 1986 federal income tax returns also list a dependent child named [REDACTED]. On the I-687 application the applicant does not list any children.

such company records, and to state whether such records are accessible, or in the alternative state the reason why such records are unavailable. Further, the letter does not state how the witness was able to date the applicant's employment. It is unclear whether the witness referred to her own recollection or any records she or the company may have maintained. Lacking relevant information, the letter regarding the applicant's employment fails to provide sufficient detail to verify the applicant's claim of continuous residence in the United States for the duration of the requisite statutory period. For these additional reasons, this document has minimal probative value.

The remaining evidence in the record is comprised of the applicant's statements and the I-687 application. However, as stated previously, to meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony, and the sufficiency of all the evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6). Here, the applicant has failed to provide probative and credible evidence of her continuous residence in the United States for the duration of the requisite period. The inconsistencies regarding the dates the applicant entered the United States and worked at particular locations within the United States are material to the applicant's claim in that they have a direct bearing on the applicant's residence in the United States during the requisite period. No evidence of record resolves these inconsistencies. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence pointing to where the truth lies. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *Matter of Ho*, 19 I & N Dec. 582, 591-592 (BIA). The applicant's evidence lacks sufficient detail, and there are material inconsistencies in the record. Therefore, the applicant's evidence has minimal probative value.

Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that she is eligible for the benefit sought. The various statements and affidavits currently in the record which attempt to substantiate the applicant's residence and employment in the United States during the statutory period are not objective, independent evidence such that they might overcome the inconsistencies in the record regarding the applicant's claim that she maintained continuous residence in the United States throughout the statutory period, and thus are not probative.

The AAO notes that in Gardena, California the applicant was arrested on September 24, 1987 for driving under the influence of alcohol or drugs with bodily injury. A search of the criminal indices did not reveal a record of conviction. While this arrest is evidence in support of the applicant residing in the United States on September 24, 1987, it does not establish the applicant's continuous residence for the duration of the requisite statutory period.

Therefore, based upon the foregoing, the applicant has 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*. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

Therefore, the AAO agrees with the decision of the director to terminate the temporary residence granted to the applicant, pursuant to § 245A(b)(2) of the Act, on the basis that the applicant is not eligible for such status.

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