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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] OFFICE: CALIFORNIA SERVICE CENTER DATE: FEB 2 5 2009
XLB-88-517-2250

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.

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application for temporary resident status was denied by the Director, Western Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

On May 4, 1988, 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 denied the application because the applicant failed to submit a completed Form I-693, Medical Examination Report. The director determined that the applicant's failure to submit this document rendered her ineligible for temporary resident status. On appeal, the applicant furnished, among other evidence, a completed Form I-693. Therefore, the applicant has overcome the basis for the director's denial.

The AAO issued a notice to the applicant on October 29, 2008, informing her that during the adjudication of her appeal, it was determined that she had not established by a preponderance of the evidence her continuous residence in the United States for the duration of the entire requisite period. The notice requested additional documentation from the applicant to show that she resided in the United States in 1983, 1985 and 1986. The applicant was granted thirty days, pursuant to 8 C.F.R. § 103.2(b)(8), to submit this additional evidence. On December 4, 2008, the AAO received a response to its request for evidence. The AAO has reviewed and considered the documentary evidence in its entirety in rendering this decision.

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 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 has continuously resided in the United States in an unlawful status for the requisite period of time. The applicant furnished a variety of documentation in support of her claim of having resided in the United States during the requisite period. 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. Furthermore, the applicant furnished several documents related to her husband's and daughter's residence in the United States during the requisite period. The applicant also furnished one document related to her mother-in-law's residence in the United States during the requisite period. Since this proceeding is regarding the applicant's residence in the United States during the requisite period, the evidence related to her husband and mother-in-law will not be considered probative, and shall not be discussed. However, the AAO will consider the documentation related to the applicant's daughter given that the applicant was her legal guardian during the requisite period. The AAO has reviewed each document in its entirety to determine the applicant's eligibility; however, the AAO will not quote each witness statement in this decision.

On October 29, 2008, the AAO issued a request for evidence to the applicant informing her that she has not established by a preponderance of the evidence her continuous residence in the United States for the duration of the requisite period. The AAO requested additional evidence from the applicant to establish her residence in the United States in 1983, 1985 and 1986. The AAO found that the applicant established her residence in the United States prior to January 1, 1982, and in 1982, 1984, 1987 and 1988 based on the following documentation:

- A copy of a California birth certificate for the applicant's daughter, . The birth certificate shows that the applicant gave birth to her daughter in Los Angeles on July 24, 1980. The birth certificate bears a seal of the Registrar-Recorder, indicating that it was issued as

a certified copy on July 9, 1982. The AAO found that this document is evidence of the applicant's residence in the United States prior to January 1, 1982, and in 1982.

- A copy of an envelope from the County of Los Angeles Department of Health Services. The envelope is addressed to the applicant's daughter, Paramount, California. The envelope bears a Los Angeles, California postmark of August 19, 1980. The applicant also furnished a copy of a County of Los Angeles Department of Health Services health record on behalf of her child, . This record shows that received the following immunizations: Diphtheria-Pertussis-Tetanus on October 17, 1980, December 15, 1980, February 23, 1981 and December 11, 1982; Polio on October 17, 1980, December 15, 1980 and December 11, 1982; and Measles on February 25, 1982. The record shows "physician's instructions" issued on the following dates: August 26, 1980, December 15, 1980, December 15, 1980 and February 23, 1981. The AAO found that these documents corroborate the applicant's claim of residence in the United States prior to January 1, 1982 and in 1982.

- A copy of the applicant's 1984 Form 1040, United States Individual Tax Return, filed jointly by her and her husband. The home address listed on this tax return is Paramount, California. Attached to the tax return is the applicant's husband's Form W-2, Wage and Tax Statement. The home address listed on the Form W-2 is Paramount, California. The applicant indicated on her Form I-687 that she resided at this address from November 1979 to May 1987. The AAO found that this document is evidence of the applicant's residence in the United States in 1984.

- An original California Department of Motor Vehicles driver license/identification card information request receipt, dated December 5, 1989. The receipt shows that the California Department of Motor Vehicles issued the applicant an identification card on August 7, 1987. The applicant also furnished a copy of her California Department of Motor Vehicles identification card, which shows that it was issued to the applicant on August 7, 1987. It shows her address as Paramount, California. The applicant's residence at this address in August 1987 is corroborated on her Form I-687. The AAO found that these documents are evidence of the applicant's residence in the United States in 1987.

- A copy of an envelope postmarked March 31, 1988 from Long Beach, California. This envelope is addressed to at , Paramount, California. The applicant indicated on her Form I-687 that she resided at this address from May 1987 to "present." The AAO found that this envelope is evidence of the applicant's residence in the United States in 1988.

On December 4, 2008, the AAO received a response to its request for evidence of the applicant's residence in the United States in 1983, 1985 and 1986. The applicant furnished the following additional evidence of her residence in the United States during the requisite period:

- Notarized letters from and The letter from states that he has known the applicant since 1979; the letter from states that she has known the applicant since 1982; and the letter from states that he has known the applicant since 1983. Each of the letters provides the specific location of where the authors first met the applicant in the United States. However, they fail to provide any other concrete information on the applicant's residence in the United States during the requisite period. The letters do not indicate how frequently the authors had contact with the applicant during the requisite period. Nor do they mention whether the authors had personal knowledge of the applicant's presence in the United States during the requisite period. Furthermore, the letters do not provide information regarding where the applicant lived during the requisite period. Given these deficiencies, these letters have minimal probative value in supporting the applicant's claims that she resided in the United States for the entire requisite period.

  A copy of a student record on behalf of the applicant's daughter, The relevant portion of this record shows that attended the second grade in the Paramount Unified School District from September 1987 to June 1988. The record lists the applicant's initial address as , Paramount, California. This document is evidence of the applicant's residence in the United States from 1987 to the end of the requisite period.

  A copy of the applicant's Social Security Statement, which shows her employment in the United States since 1988. This document is evidence of the applicant's residence in the United States in 1988.

The applicant, in her response to the request for evidence, indicated that her husband was very secretive with her and she never saw any bills, paystubs or other financial documents. Similar assertions are made in a letter from the applicant's daughter, Ms. states that she has resided in Paramount with her mother since her birth. She states that for the most part of her childhood she and her mother lived with her father and grandmother. She indicates that her mother does not have much evidence because her father was a male chauvinist and was controlling over her mother. She states that her mother was not allowed to go out and was scared. The AAO has given full consideration to each of these statements. However, their weight is undermined by the following inconsistent evidence furnished in response to the request for evidence:

- A copy of an envelope postmarked March 18, 1985 from Anaheim, California. This envelope is addressed to the applicant at Paramount, California. However, the applicant indicated on her Form I-687 that she resided at , Paramount, California from November 1979 to May 1987. She showed on her Form I-687 that she moved to in May 1987. This inconsistency is material to the applicant's claim because it undermines her credibility and has a direct bearing on her residence in the United States during the requisite period.

- A copy of a California School Immunization Record issued on behalf of the applicant's daughter, The record shows that received the following immunizations:

Diphtheria-Pertussis-Tetanus on August 24, 1980, November 20, 1980, January 20, 1981 and August 19, 1987; Polio on August 24, 1980, November 20, 1980, January 20, 1981 and August 19, 1987; and Rubella on August 18, 1981. However, this record is inconsistent with a copy of a County of Los Angeles Department of Health Services health record the applicant initially furnished as corroborating evidence. That record shows that received the following immunizations: Diphtheria-Pertussis-Tetanus on October 17, 1980, December 15, 1980, February 23, 1981 and December 11, 1982; Polio on October 17, 1980, December 15, 1980 and December 11, 1982; and Measles on February 25, 1982. These inconsistencies are material to the applicant's claim because they undermine her credibility and have a direct bearing on her residence in the United States during the requisite period.

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. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. *Id.* at 591-92. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Id.* The AAO finds that the applicant has failed to provide independent objective evidence of her continuous residence in the United States for the entire requisite period. The applicant has not furnished any evidence probative of her residence in the United States in 1983, 1985 and 1986. Furthermore, s immunization records are deemed not credible and cast doubt upon the applicant's claims of residing continuously in the United States in 1982 and 1987.

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.

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