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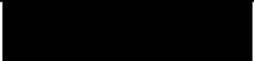


U.S. Citizenship  
and Immigration  
Services

41



FILE:



Office: WESTERN SERVICE CENTER

Date: JUN 08 2009

XPO-88-172-02063

IN RE:

Applicant:



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 of the Western Service Center, and is now 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). The director denied the application, finding that the applicant had not established by a preponderance of the evidence that she had continuously resided in the United States in an unlawful status for the duration of the requisite time period. In addition, the director denied the application because the applicant failed to respond to a request for documentation.<sup>1</sup>

On appeal, the applicant asserts that she did not receive the request for evidence.<sup>2</sup> In addition the applicant states that she believes she has submitted evidence that is sufficient to establish her claim. The applicant has not submitted any new 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.<sup>3</sup>

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).

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<sup>1</sup> The applicant failed to respond to a request for a copy of her daughter [REDACTED] birth certificate. However, a copy of that birth certificate is now part of the record.

<sup>2</sup> The record reveals that the request for evidence was sent to the address of record for the applicant but was returned as undeliverable. However, the fact that the applicant did not receive the request for a copy of her daughter [REDACTED] birth certificate is harmless error, since a copy of that birth certificate is now part of the record, and the AAO conducts a *de novo* review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.2(d)(6).

<sup>3</sup> 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 (9<sup>th</sup> 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).

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 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 two letters and a copy of the birth certificate of one of the applicant's daughters. 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. 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 record contains two letters from [REDACTED], both on the letterhead of Norco Injection Molding in Chino, California. [REDACTED] states that he has been acquainted with the applicant since 1982. He states that the applicant has resided at [REDACTED] in Chino, California since April 1981. However the affiant does not explain how he obtained the information about the applicant's residence, as he has only known the applicant since 1982. [REDACTED] also states that the applicant has been working as an operator for Norco Injection Molding from February 14, 1985 through April 2, 1988. However, the letters do not state what position [REDACTED] holds with Norco Injection Molding.

Although the witness claims to have personal knowledge of the applicant's residence in the United States during the requisite period, the witness's statements 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 were a sufficient basis for reliable knowledge about the applicant's residence in the United States during the requisite period. For instance, the witness does not state how he dates his initial meeting with the applicant, how frequently he had contact with the applicant, and how he had personal knowledge of the applicant's presence in the United States during the requisite period. Upon review, the AAO finds that the witness's statements do not indicate that his assertions are probably true.

Furthermore, the letters of [REDACTED] fail 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 letters fail to declare whether the information was taken from company records, to identify the location of 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 letters do not state how the witness was able to date the applicant's employment. It is unclear whether the witness referred to his own recollection or any records he or the company may have maintained. Lacking relevant information, the letters regarding the applicant's employment fail 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, these documents have minimal probative value.

The remaining evidence in the record is comprised of a copy of the birth certificate of the applicant's daughter [REDACTED] and the Form I-687. The birth certificate reveals that the applicant's daughter was born in the United States on July 26, 1986. Although this document is evidence in support of the applicant's residence in the United States on July 26, 1986, it is not sufficient evidence of continuous residence for the duration of the requisite period.

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's evidence lacks sufficient detail. Therefore, 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.

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 statements currently in the record which attempt to substantiate the applicant's residence and employment in the United States for the duration of the statutory period are not objective, independent evidence in support of the applicant's claim that she maintained continuous residence in the United States throughout the statutory period, and thus are not probative.

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.

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