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U.S. Citizenship
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Services



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FILE: [REDACTED]
SRC-02-135-53024

Office: NEWARK

Date: **MAR 17 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 Field Office Director, Newark, New Jersey, terminated the applicant's temporary resident status and denied his application to adjust status from temporary to permanent resident. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that on September 9, 1991, the applicant filed a Form I-687, Application for Status as a Temporary Resident, with the Immigration and Naturalization Service (INS) in Miami, Florida to establish his claim for LULAC class membership. On February 25, 2002, the Director, Vermont Service Center, determined that the applicant established his claim for LULAC class membership and instructed the applicant to file a Form I-687, Application for Status as a Temporary Resident. On January 23, 2004, the Director, Texas Service Center, reviewed the applicant's Form I-687 and approved his temporary residence. On April 24, 2006, the applicant filed a Form I-698, Application to Adjust Status from Temporary to Permanent Resident. On August 22, 2007, the Field Office Director, Newark, determined the applicant to be ineligible for temporary resident status based on inconsistent documentation in the record of proceedings. Based on this finding, the director terminated the applicant's temporary resident status and denied his application to adjust status from temporary to permanent resident.

On appeal, counsel submits additional documentary evidence. The entire record was reviewed and considered in rendering this decision.

The temporary resident status of an alien may be terminated upon the determination that the alien was ineligible for temporary residence under section 245A of the Act. 8 C.F.R. § 245a.2(u)(i). An alien whose temporary resident status has been terminated is ineligible for adjustment from temporary to permanent resident status. 8 C.F.R. § 245a.3(c)(5).

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 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.

The issue in this proceeding is whether the applicant has overcome the inconsistencies in the record and established his eligibility for temporary resident status. As stated, the applicant must establish that he (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 his claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists of four statements of relationship. The applicant has furnished other documentation that indicates he 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 AAO has reviewed the record in its entirety to determine the applicant’s eligibility.

The record of proceedings reflects that the applicant submitted a Form I-687, Application for Status as a Temporary Resident, to the INS on March 28, 2002. At part 33 of this application, where applicants are asked to list their residences in the United States since first entry, the applicant showed that during the requisite period he resided at [REDACTED] Trenton, New Jersey from March 1981 to December 1987 and [REDACTED], Tampa Florida from December 1987 to July 1993. At part 36 of the application, where applicants are asked to list their employment in the United States since first entry, the applicant showed that he was self-employed as a

handyman/gardener from 1981 to 1987 and employed as a helper at [REDACTED] in Orlando, Florida from December 1987 to May 1993.

The applicant furnished as corroborating evidence of his residence in the United States notarized witness statements from [REDACTED] and [REDACTED]. The statement from [REDACTED] provides that the applicant is his brother and resided with him at [REDACTED] Trenton, New Jersey from March 1981 to December 1987. The statement from [REDACTED] provides that the applicant resided at his home at [REDACTED] Tampa, Florida from December 1987 to July 1993. The AAO finds that these statements fail to establish the applicant's entry into the United States prior to January 1, 1982 and continuous unlawful residence in the United States for the duration of the requisite period. The statement from [REDACTED] does not indicate how he first met the applicant and how he dated his initial meeting with the applicant. The statement from [REDACTED] provides that he is the applicant's brother; however the applicant failed to list [REDACTED] as his brother on his Form I-687.¹ Neither of the statements provides any information on their living arrangement with the applicant or any type of housing agreement they may have instituted. Nor do the statements contain documentation of the witnesses' residences during the requisite period. Furthermore, the statements fail to indicate the type of employment the applicant was engaged in during the requisite period. Therefore, the AAO finds that, individually and together, the witness statements do not indicate that their assertions are probably true. Consequently, they have little probative value in supporting the applicant's claims that he entered the United States prior to January 1, 1982 and resided in the United States for the requisite period.

The record reflects that on August 3, 1988, the applicant filed with INS a Form I-589, Application for Asylum. The applicant indicated on his asylum application that he received a passport in Jamaica on April 7, 1983 and a visitor visa at the U.S. Consulate in Kingston, Jamaica on October 16, 1986. The record contains a letter from the Jamaican Consulate in Miami, Florida, which states that the applicant was issued a Jamaican passport in 1983 at Kingston, Jamaica. The applicant concurrently filed with his asylum application, a Form G-325A, Biographic Information Form. The applicant showed on his biographic information form that he resided at [REDACTED] Montego Bay, Jamaica from July 1979 to October 1987. The applicant further showed that he was employed at [REDACTED] as a construction engineer from February 1985 to October 1987. This information directly contradicts the applicant's claims of entry into the United States prior to January 1, 1982 and continuous residence in the United States during the entire requisite period. The applicant's Form I-687 shows that he has continuously resided in the United States since March 1981, and has only been absent from the United States from September 27, 1987 to October 8, 1987 and August 18, 1985 to September 1, 1985.

The contradictions 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. 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

¹ Part 32 of the application requests applicants to list their spouse, former spouse, children and siblings.

independent objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 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 Field Office Director, Newark, cited to the aforementioned inconsistencies in a notice of intent to deny the applicant's permanent residence and terminate his temporary residence. In rebuttal to the notice, counsel asserted that ██████████ claimed to be an immigration lawyer and completed the applicant's asylum application. Counsel contended that the applicant signed the application with trust and reliance on ██████████. Counsel maintained that the applicant unknowingly misrepresented facts that are not material to the asylum application.² As additional evidence of the applicant's residence in the United States, counsel furnished witness statements from ██████████ and ██████████, and an affidavit from the applicant.

The statement from ██████████ provides that the applicant was employed by his father, a master carpenter/builder, from 1981 to 1984. He states that he met the applicant when he came to his home to be transported to job sites. Although ██████████ states that he has known the applicant since before January 1, 1982, his statement does not supply enough details to lend credibility to his claimed relationship with the applicant. For instance, ██████████ does not indicate how he dated his initial meeting with the applicant, how frequently he had contact with the applicant, or how he had personal knowledge of the applicant's presence in the United States. Further, ██████████ does not provide information regarding where the applicant lived during the requisite period. Given these deficiencies, this statement is of little probative value in supporting the applicant's claims that he entered the United States prior to January 1, 1982 and resided in the United States for the requisite period.

The statement from ██████████ provides that he met the applicant at the New Jersey transit train station in 1981. He states that during the period of 1981 to 1983, he traveled with the applicant on a train to work almost every weekday. Mr. ██████████ states that he remained friends with the applicant and went with him for drinks on the weekends. This statement offers some information on Mr. ██████████ relationship with the applicant during the requisite period. However, it is still lacking specific detail on the applicant's residence. For instance, ██████████ states that from 1981 to 1983 he and the applicant took the train to work. However, he does not mention the name of the train station. Nor does he indicate the type of work that the applicant was engaged in. Further, Mr. ██████████ failed to provide any specific details on his relationship with the applicant other than stating that they met for drinks at ██████████. As stated above, to be considered probative and credible, witness statements must do more than simply state that a witness 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. Since Mr. ██████████ statement does not provide sufficient detail, it is of minimal probative value in supporting the applicant's claims that he entered the United States prior to January 1, 1982 and resided in the United States for the requisite period.

² The AAO notes that at issue in this proceeding is whether the inconsistencies are material to the applicant's Form I-687, Application for Status as a Temporary Resident.

The applicant asserts in his affidavit, dated August 6, 2007, that that [REDACTED] presented himself as an immigration attorney and advised that the applicant that he was eligible for asylum. The applicant notes that he gave [REDACTED] accurate information and then signed a blank form. The applicant contends that he never received any confirmation from INS or [REDACTED] regarding his asylum application. The applicant states that he learned that [REDACTED]'s office was raided by the INS and [REDACTED] was arrested and imprisoned for fraudulent immigration acts. The applicant maintains that he provided true and accurate information on his amnesty application. On appeal, counsel furnished a second affidavit from the applicant, dated September 5, 2007. In this affidavit the applicant again asserts that he had no knowledge of the information contained in his asylum application because he signed blank forms that were later completed by [REDACTED]

The AAO has fully considered the applicant's and counsel's statements regarding [REDACTED]. However, the AAO finds that the applicant signed the Form I-589 and Form G-325A noted above and is responsible for the contents of that form. The AAO notes that there is no remedy available for an applicant who assumes the risk of authorizing an unlicensed attorney or unaccredited representative to undertake representations on its behalf. *See* 8 C.F.R. § 292.1. The AAO only considers complaints based upon ineffective assistance against accredited representatives. *Cf. Matter of Compean, Bangaly and J-E-C-, et al.*, 24 I&N Dec. 710 (A.G. 2009)(requiring an appellant to meet certain criteria when filing an appeal based on ineffective assistance of counsel).

The AAO further notes that the applicant's assertion that he never received any confirmation from INS regarding his asylum application is not supported by the record. The record reveals that on November 4, 1988, the Newark District Office sent the applicant a letter informing him of his asylum interview. The applicant failed to appear for this interview and was placed in deportation proceedings for a hearing before an Immigration Judge on July 11, 1989. The applicant failed to appear for this hearing and the Immigration Judge administratively closed the proceedings. The notices for the applicant's asylum interview and deportation hearing were sent to his last known address at [REDACTED], Trenton, New Jersey. According to the letter from [REDACTED], [REDACTED], he still resides at that address, and would presumably have notified the applicant of these notices. Therefore, the applicant's assertion can only be given minimal weight.

The remaining evidence furnished on appeal is an affidavit from [REDACTED], dated September 19, 2007. Mr. [REDACTED] asserts that he assisted the applicant with his asylum application. He states that he asked the applicant a series of questions, including where he last worked and last address in Jamaica and made note of his responses. Mr. [REDACTED] contends that he then filled out the form using his notes and the relevant information from the applicant's passport. He states that the applicant did not have a chance to review the completed application prior to its submission. Mr. [REDACTED] states that to his recollection, the applicant did meet the required presence in the United States and any information in the application reflecting otherwise must have resulted in error.

The AAO finds that [REDACTED]'s statement fails to resolve the inconsistencies in the record. Mr. [REDACTED]'s affidavit only provides that he may have made an error in the asylum application. It does not indicate that he altered the applicant's dates of residence and employment for the purpose of an asylum claim. Further, [REDACTED] claim that the applicant meets the required presence in the

United States is ambiguous. [REDACTED] has not described “required presence” and his definition of this term. Notably, [REDACTED]’s affidavit was written over nineteen years after the date the applicant’s asylum application was filed. He has not indicated how he was able to recall, nineteen years later, that the applicant meets the “required presence.” Finally, it should be noted that Mr. [REDACTED] indicates that he filled out the applicant’s asylum application with the relevant information from the applicant’s passport. As stated above, the applicant indicated on his asylum application that he received a passport in Jamaica on April 7, 1983 and a visitor visa at the U.S. Consulate in Kingston, Jamaica on October 16, 1986. The record contains a letter from the Jamaican Consulate in Miami, Florida, which states that the applicant was issued a Jamaican passport in 1983 at Kingston, Jamaica. However, the applicant’s Form I-687 application fails to show that he was in Jamaica in either 1983 or 1986. This inconsistency casts further doubt upon the credibility of the applicant’s claim of continuously residing in the United States for the entire requisite period.

Based on the foregoing, the AAO finds that pursuant to *Matter of Ho, supra*, the applicant has failed to resolve the inconsistencies in the record with independent objective evidence. Furthermore, the applicant has failed establish by a preponderance of the evidence that he 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.³ As the applicant has not overcome the basis for the termination of status, the appeal must be dismissed.

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

³ As stated, an alien whose temporary resident status has been terminated is ineligible for adjustment from temporary to permanent resident status. 8 C.F.R. § 245a.3(c)(5). The applicant is therefore ineligible to adjust to permanent resident status.