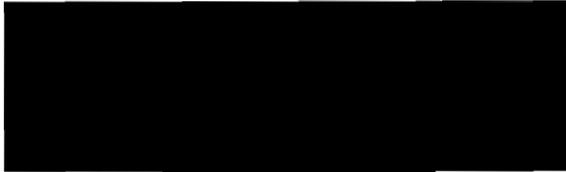


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FILE:

XEL 88 036 05106

Office: LOS ANGELES

Date:

NOV 18 2009

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.

IN 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.

Perry Rhew
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.

The director denied the application because the applicant had not established by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status for the duration of the requisite period.

On appeal, the applicant asserts, "I sincerely apologize for this incident which occurred over twenty five years ago. At the time of my interview, I did not remember that I had left. It was never my intention to lie, especially under oath."

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)(1).

An alien applying for adjustment of status 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. *See* 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 including affidavits 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.* 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 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 applicant submitted evidence, in an attempt to establish continuous unlawful residence in the United States during the requisite period, such as utility statements and rent receipts for properties in El Monte, California at [REDACTED] and [REDACTED] wage and tax statements for 1984 and 1986; and copies of his California Identification Card and Driver License issued September 22, 1980 and March 30, 1984, respectively.

The applicant also submitted a rental agreement that has no probative value as it was not signed by the applicant.

On his Form I-687 application, the applicant claimed no absences during the requisite period. At the time of his interview on September 24, 2007, the applicant indicated that he had not departed the United States since his 1979 entry.

In response to a Form I-72 issued on October 31, 2007, the applicant submitted his son’s birth certificate, which reflects the son’s birth on January 17, 1983. The birth certificate also contained the applicant’s signature establishing that he had registered his son’s birth on April 27, 1983 in Mexico.

The director determined that based on the applicant’s failure to disclose his 1983 absence on his application or at the time of his interview, he had failed to establish continuous residence in the United States. Accordingly, on February 19, 2008, the director denied the application.

On appeal, the applicant submits an affidavit from [REDACTED], who indicates that the applicant was her tenant from 1980 to 1988 at [REDACTED]. The affiant also attests to the applicant’s absence from March 1983 to April 1983. The applicant also submits a photocopied statement reflecting that his son was baptized on January 19, 1985 at Our Lady Queen of Angels in Los Angeles, California.

The applicant’s failure to remember at the time of his interview an absence that occurred over 24 years ago may be plausible. However, the fact that the applicant did not claim the absence on his Form I-687 application in 1988, raises questions to his credibility.

The affidavit from [REDACTED] raises questions to its authenticity as the affiant attested to the applicant’s residing at [REDACTED] from 1980 to 1988. However, neither the utility statements nor the rent receipts list this address as the applicant’s place of residence during the requisite period.

The supporting documents submitted would normally suffice to establish that the applicant continuously resided in the United States during the eligibility period. However, the applicant's failure to disclose the 1983 absence from the United States is a strong indication that he was outside the United States beyond the period of time allowed by regulation and undermines the credibility of his claim to have continuously resided in the United States during the period in question. Therefore, it is concluded that he has failed to establish continuous residence in an unlawful status from prior to January 1, 1982, through the date he filed his application.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he has 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.