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**U.S. Citizenship
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FILE: [REDACTED] Office: LOS ANGELES
SRC-01-272-53010

Date: OCT 14 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:

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 termination of the applicant's temporary resident status by the director of the Los Angeles office is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The record reflects that on April 10 1991, the applicant filed a Form I-687, application for status as a temporary resident, with the Immigration and Naturalization Service (INS) in Sepulveda, California to establish her claim for CSS class membership. On November 7, 2000 the director of the Vermont Service Center determined that the applicant established her claim for CSS class membership and instructed the applicant to file a Form I-687 application. On January 29, 2004 the director of the Texas Service Center reviewed the applicant's I-687 application and approved her temporary residence. On January 15, 2008 the director of the Los Angeles office determined the applicant to be ineligible for temporary resident status based on both a lack of documentation and inconsistent documentation in the record of proceedings. Based on this finding, the director terminated the applicant's temporary resident status.¹

On appeal, the applicant states that the director's decision is erroneous. The applicant has submitted additional evidence on appeal. 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 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).

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).

¹ On September 12, 2006 the applicant filed a Form I-698, application to adjust status from temporary to permanent resident, which is still pending.

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 has overcome the inconsistencies in the record and established her eligibility for temporary resident status. As stated, the applicant must establish that she (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 several witness statements. The AAO has reviewed the witness statements in their entirety to determine the applicant's eligibility; however, the AAO will not quote each 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 of proceedings reflects that the applicant submitted the instant I-687 application, in which the applicant stated at part 33 of the application that she resided in Los Angeles, California from January 1984 for the duration of the requisite statutory period. At part 36 of the application the applicant listed employment as a housekeeper in the Los Angeles area from 1981 for the duration of the requisite statutory period. At the time of her interview on the Form I-698 application, the applicant could not provide any information regarding residence addresses in the United States prior to 1984. Further, at the time of the interview the applicant could not remember where she had been employed or in what capacity, but stated that she had not spent much time as a housekeeper. In

addition, at part 35 of the instant application the applicant listed two absences from the United States, in 1987 and 1988, respectively, while in the initial I-687 application the applicant listed one absence from the United States in 1988.

The applicant furnished, as corroborating evidence of her residence in the United States, one witness statement in support of her application. The statement is general in nature and states that the affiant has knowledge of the applicant's residence in the United States for the entire requisite period.

The director of the Los Angeles Office cited the aforementioned inconsistencies in a notice of intent to terminate (NOIT) the applicant's temporary residence. In rebuttal to the NOIT, as additional evidence of the applicant's residence in the United States, the applicant furnished an additional witness statement, which is general in nature and states that the affiant has knowledge of the applicant's residence in the United States for the entire requisite period.

The remaining evidence furnished on appeal is an affidavit from [REDACTED] who states that the applicant worked for her as a babysitter from January 1981 until January 1982. However, the testimony of the affiant is inconsistent with the testimony of the applicant in both the instant I-687 application and the initial I-687 application, in which the applicant has not listed any employment with the affiant or as a babysitter during the requisite statutory period. This is an inconsistency which is material to the applicant's claim in that it has a direct bearing on the applicant's residence in the United States for the duration of the requisite period. As stated above, 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, supra*. This contradiction undermines the credibility of the applicant's claim of entry into the United States prior to January 1, 1982 and continuous residence in the United States during the requisite period.

Furthermore, the employment verification letter from [REDACTED] does not meet the requirements set forth in the regulations, which provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment. 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 affiant's statement of employment fails to comply with the above cited regulation because it lacks considerable detail regarding the applicant's employment. For instance, the affiant does not state the applicant's daily duties as a babysitter, the number of hours or days she was employed, or the location at which she was employed. Furthermore, the affiant does not state how she was able to date the applicant's employment. It is unclear whether she referred to her own recollection or any records she may have maintained. For these reasons, the affiant's statement regarding the applicant's employment is of little probative value.

Finally, although the witnesses claim to have personal knowledge of the applicant's residence in the United States during the requisite period, the witness 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. To be considered probative and credible, witness affidavits must do more than simply state that an affiant 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 it probably did exist and that the witness, by virtue of that relationship, does have knowledge of the facts alleged. For instance, the witnesses do not state how they date their initial meeting with the applicant or specify social gatherings, special occasions or social events when they saw and communicated with the applicant during the requisite period. The affiants also do not state how frequently they had contact with the applicant during the requisite period. The affiants do not provide sufficient details that would lend credence to their claimed knowledge of the applicant's residence in the United States during the requisite period. For these reasons the AAO finds that the witness statements do not indicate that their assertions are probably true.

Based on the foregoing, the AAO finds that the applicant has failed to resolve the inconsistencies in the record with independent objective evidence. Furthermore, 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. 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.