

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

L1



FILE: MSC-06-004-11551 Office: HOUSTON Date: APR 01 2010

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:



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.

Elizabeth McCormack

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The applicant's status as a temporary resident was terminated by the Director, Houston. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant was granted lawful temporary residence on November 15, 2006. The director noted that a further review of United States Citizenship and Immigration Services (USCIS) records show that the applicant is ineligible for this status. The director pointed to several inconsistencies and deficiencies with respect to the applicant's continuous residence in the United States throughout the relevant period. Therefore, the director determined that the applicant failed to establish continuous residence since prior to January 1, 1982 and through the requisite period. On December 16, 2008, the director issued a Notice of Intent to Terminate (NOIT) and granted the applicant 30 days in which to submit evidence in rebuttal to the proposed termination of his temporary resident status. Based on the evidence submitted, the applicant failed to overcome the reasons stated in the NOIT. Therefore, the director determined that the applicant was not eligible for status as a temporary resident pursuant to Section 245A of the Act, and issued a notice of termination (NOT) on November 9, 2009. The applicant filed a timely appeal.

Section 245A(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255a(b)(2) states in pertinent part that the Act provides for termination of temporary residence status granted to an alien if it appears to the Attorney General [now Secretary, Department of Homeland Security] that the alien was in fact not eligible for such status, or the alien commits an act that makes the alien inadmissible to the United States as an immigrant, or the alien is convicted of any felony or three or more misdemeanors committed in the United States. *See also* 8 C.F.R. § 245a.4(b)(20)(i)(A).

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 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 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). The AAO has reviewed the entire record and agrees with the director that the applicant is not eligible for temporary resident status.

On appeal, the applicant indicates that he has previously submitted sufficient evidence of his entry prior to January 1, 1982 and his continuous residence. He does not submit any additional evidence.

The issue in this proceeding is whether the applicant established 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.

The record contains W-2s for 1984, 1985 and 1986 issued by [REDACTED] along with a receipt from [REDACTED] indicating that the applicant was admitted to the hospital from March 21, 1987 until March 23, 1987. These documents are credible evidence that the applicant resided in the United States from 1984 until 1987. However, the evidence in the record which supports the applicant's residence in the United States prior to 1984 does not contain sufficient detail to be considered probative.

Specifically, the record of proceedings includes affidavits from [REDACTED] and [REDACTED] [REDACTED] indicates that he lived with the applicant at [REDACTED] in Houston from 1980 until 1989. He does not submit any additional information or evidence to support his assertions such as a lease agreement, rental receipts or utility bills. Furthermore, in a previous affidavit, [REDACTED] indicated that the applicant lived with him until 1987. [REDACTED] indicates that he met the applicant in 1985. [REDACTED] indicates that he met

the applicant in 1984. Neither affiant indicate how they met the applicant or how they date their initial acquaintance with him.

Taken together, the affidavits do not include sufficient detailed information about the applicant's continuous residency in the United States since before January 1, 1982 and throughout the requisite period. The affiants fail to provide sufficient details that would lend credence to their claimed acquaintance with the applicant and the applicant's residence in the United States during the requisite period. It is noted by the AAO that the director indicated that the telephone numbers of the applicant's were not current. Given the substantial amount of time that has passed, that portion of the director's decision will be withdrawn.

The record also includes two employment letters. The first, from [REDACTED] indicates that the applicant worked in trash hauling from 1981 until 1984 and was paid cash weekly. The affiant indicates that the applicant worked only periodically. The second letter, from [REDACTED] of [REDACTED] indicates that the applicant was employed from June 1986 until March 1987 as a general maintenance/construction worker. Both letters fail to meet certain regulatory standards set forth at 8 C.F.R. § 245a.2(d)(3)(i), which provides that letters from employers must include the applicant's address at the time of employment; exact period of employment; whether the information was taken from official company records and where records are located and whether USCIS may have access to the records; if records are unavailable, an affidavit form-letter stating that the employment records are unavailable may be accepted which shall be signed, attested to by the employer under penalty of perjury and shall state the employer's willingness to come forward and give testimony if requested. The statements noted above do not include much of the required information and can be afforded minimal weight as evidence of the applicant's residence in the United States for the duration of the requisite period.

Therefore, based upon the foregoing, the applicant is ineligible for temporary residence because he failed to 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 from that date until 1984 as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M--*, *supra*. Any temporary resident status previously granted to the applicant is terminated.

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