

DISCUSSION: The application for temporary resident status pursuant to Section 245A of the Immigration and Nationality Act, amended by the Immigration Reform and Control Act of 1986, 8 U.S.C. 1255a, was denied by the director in Laguna Niguel, California. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a native of Mexico who claims to have lived in the United States since before January 1, 1982, submitted a Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (Act), May 10, 1988. The director denied the application, finding that the applicant had not established by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status from before January 1, 1982 through the date of filing the application.

On appeal the applicant asserts that he believes that he is eligible for temporary resident status under the Immigration Reform Act of 1986 and that the decision by the director to deny his application was in error. The applicant requested a copy of the Record of Proceedings (ROP) and indicated that he will submit a brief/evidence after receiving the ROP. The record reflects that the ROP was processed on September 25, 2009. The record also reflects that the applicant did not submit additional evidence as he had indicated. The AAO will consider the record as complete and will adjudicate the application based on the evidence in the record.

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).

For purposes of establishing residence and physical presence under the CSS/Newman Settlement Agreements, the term "until the date of filing" in 8 C.F.R. § 245a.2(b) means until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file during the original legalization application period of May 5, 1987 to May 4, 1988. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

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 (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. Here, the applicant has failed to meet his burden.

The applicant claims that he has been residing in the United States since before January 1982, but did not submit any objective evidence to establish when he entered the United States. As evidence of his residence in the United States during the request period, the applicant submitted the following documents:

- Copies of Form 1040 U.S. Individual Income Tax Returns for 1985 through 1987, and copies of Form 540A, California Resident Personal Income Tax for the years 1985 through 1987.

- Copies of W-2 Wage and Tax Statements from Best Food Market in Long Beach, California, for 1986, and from [REDACTED] in Huntington Beach, California, for 1987.
- A copy of pay stub from Best Food Market dated December 28, 1984.
- Affidavits from acquaintances who claim to have resided with or otherwise known the applicant in the United States during the 1980s.

The AAO will accept the copies of W-2 Wage and Tax Statements from Best Food Market and G&M oils, a copy of the pay stub from Best Food Market dated December 28, 1984, and copies of Form 1040A U.S. Individual Income Tax Returns and copies of Form 540A California Resident Tax Returns for 1985 through 1987, as credible evidence that the applicant resided in the United States from sometime in 1984 through the requisite period. The AAO will focus its review in this proceeding on evidence submitted by the applicant to establish his continuous residence in the United States from before January 1, 1982 through the end of 1983.

The record reflects that the applicant did not submit objective evidence to establish his entry into the United States before January 1, 1982. Although the applicant provided addresses where he claimed to have resided from October 1981, the applicant did not submit any documentation to establish that he resided at those addresses during the years claimed. Furthermore, the applicant did not provide evidence of how he cared for himself including paying rent for the addresses he claimed until August 1984, when the applicant began to work at Best Food Market.

The affidavits in the record from acquaintances who claim to have resided with or otherwise known the applicant during the 1980s, have fill-in-the-blank formats with very little input by the affiants. The affiants claim to have resided with the applicant for sometime starting from October 1981 and October 1983 respectively, yet none provided the address where they claimed to have resided with the applicant. The affiants provided very few details about the applicant's life in the United States and the nature and extent of their interactions with him over the years. The affiants claim to have known the applicant continuously resided in Long Beach, California, from October 1981, but did not specify the address(es). Also, the affiants failed to account for the period the applicant claimed that he resided in Southgate, California. The affidavits are not accompanied by documentary evidence – such as photographs, letters, and the like – of the affiants' personal relationships with the applicant in the United States during the 1980s. Furthermore, the affiants did not provide any documentation to establish their identities and residence in the United States during the 1980s. For all the reasons discussed above, the AAO finds the affidavits have little probative value as credible evidence of the applicant's continuous residence in the United States from before January 1, 1982 through 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 he is eligible for the benefit sought.

Therefore, based upon the foregoing, the applicant has 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 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.

The AAO notes that the applicant was arrested by Norwalk, California, Sheriff's office on February 21, 1990, on one count of Petty Theft, and by Long Beach, California, police on January 13, 1992, for failure to obey Restraining Order. The actual court records are not currently contained in the record and the applicant's criminal history will not be used as a basis for dismissing his appeal.

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