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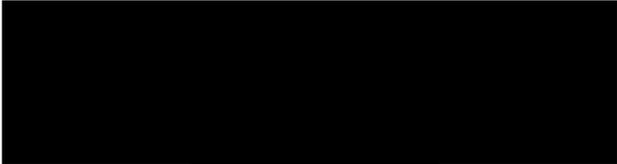
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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FILE: [REDACTED] Office: LOS ANGELES Date: FEB 04 2010
MSC-05-186-14167

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.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The director of the Los Angeles office terminated the temporary resident status of the applicant, pursuant to the terms of the CSS/Newman Settlement Agreements, finding the applicant to be ineligible for temporary resident status based on both a lack of documentation and inconsistent documentation in the record of proceedings.

On appeal, the applicant asserts that the director's decision is erroneous because the evidence which he previously submitted establishes by a preponderance of the evidence that he continuously resided in the United States in an unlawful status for the duration of the requisite time period. The applicant has not submitted any 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. Section 245A(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1255a(b)(2)(A), and 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).

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 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 a witness statement and documents. The AAO has reviewed the documents 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 contains a witness statement from [REDACTED]. The statement is general in nature and states that the witness has knowledge of the applicant's residence in the United States for a portion of the requisite period.

Although the witness claims to have personal knowledge of the applicant's residence in the United States during the requisite period, the witness's statement does not provide concrete information, specific to the applicant and generated by the asserted associations with him, 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 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 it probably did exist and that the witness, by virtue of that relationship, does have knowledge of the facts alleged. For instance, the witness does not state how he dates his initial meeting with the applicant or specify social gatherings, other special occasions or social events when he saw and communicated with the applicant during the requisite period. The witness also does not state how frequently he had contact with the applicant during the requisite period. The witness does not

provide sufficient details that would lend credence to his claimed knowledge of the applicant's residence in the United States during the requisite period. For these reasons the AAO finds that the witness's statement does not indicate that his assertions are probably true.

The record contains a copy of an undated, month-to-month rental agreement between the applicant and his wife, as lessees, and [REDACTED], as lessor. The rental agreement has an effective date of April 1, 1981 and pertains to premises located at [REDACTED] in Los Angeles. In judging the probative value and credibility of the evidence submitted, greater weight will be given to the submission of original documentation. 8 C.F.R. § 245a.2(d)(6). This document is some evidence of the applicant's presence in the United States in April 1981.

The applicant has submitted an earnings record from the Social Security Administration, which states that, based upon information supplied by the applicant, earnings amounts have been transferred to the applicant's earnings record for the years 1981 through 1988. The source of the earnings for the years 1981 through 1988 is listed as being a company named [REDACTED], of Irving, Texas.

The record contains W-2 forms and federal tax returns for the years 1981 through 1988. The W-2 forms for the years 1981 through 1988 state a company named [REDACTED] as the applicant's employer. The record also contains state income tax returns for the years 1981, 1983 and 1984. However, the applicant testified at interviews on April 10, 2006 and August 20, 2008 that he did not begin filing income tax returns until the year 2000. The income tax returns for the year 1983 do not reflect any dependent children, although the record reflects that the applicant's son [REDACTED] was born on January 30, 1983. Further, the 1984 state tax return lists as a dependent the applicant's son, [REDACTED]. However, the record reflects that this son was not born until August 9, 1985. In addition, the federal income tax returns for the years 1985 and 1986 list only one dependent child, when the record reflects that by that time the applicant had two children. Finally, at the time of his interview on August 20, 2008, the applicant stated that he worked at the airport at a temporary job checking luggage, from 1981 for about three years, although he stated that he couldn't remember the name of the company. The applicant stated that after those three years at the airport, he worked for different companies doing maintenance work. Although these tax documents would be some evidence in support of the applicant's presence in the United States from 1981 for the duration of the requisite period, due to these inconsistencies the documents have minimal probative value.

The applicant has submitted a copy of a receipt for registered mail sent to his wife in Guatemala with a postmark date of June 23, 1982.¹ As stated above, in judging the probative value and credibility of the evidence submitted, greater weight will be given to the submission of original documentation. 8 C.F.R. § 245a.2(d)(6). The receipt is some evidence of the applicant's presence in the United States on June 23, 1982.

The record contains a copy of a letter from [REDACTED], customer service manager of Bank of America, stating that the applicant opened a savings account in November 1983. As stated above, in judging the probative value and credibility of the evidence submitted, greater weight will be given to

¹ However, the applicant testified at an interview on August 20, 2008 that his wife came to the United States with him on February 5, 1981.

the submission of original documentation. 8 C.F.R. § 245a.2(d)(6). The letter is some evidence of the applicant's presence in the United States in November 1983.

The record contains copies of two documents from Pediatric & Family Medical Center dated May 2, 1988 for the applicant's two sons, [REDACTED] and [REDACTED]. These documents are some evidence of the applicant's presence in the United States on May 2, 1988.

The remaining evidence in the record is comprised of copies of the applicant's statements, the instant I-687 application, an initial I-687 application filed in 1988 to establish the applicant's CSS class membership, and a Form I-698, application to adjust status from temporary to permanent resident.³

The director of the Los Angeles Office cited some of the aforementioned inconsistencies in a notice of intent to terminate (NOIT) the applicant's temporary residence. In rebuttal to the NOIT, the applicant asserted that the evidence which he previously submitted establishes by a preponderance of the evidence that he continuously resided in the United States in an unlawful status for the duration of the requisite time period. The applicant did not submit any additional evidence in response to the NOIT.

The applicant has failed to provide probative and credible evidence of his continuous residence in the United States for the duration of the requisite period. The inconsistencies regarding the applicant's employment in the United States 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. No evidence of record resolves these inconsistencies. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence pointing to where the truth lies. 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). These contradictions undermine 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.

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. The various statements currently in the record which attempt to substantiate the applicant's employment in the United States during the statutory period are not objective, independent evidence such that they might overcome the inconsistencies in the record regarding the applicant's claim that he maintained continuous residence in the United States throughout the statutory period, and thus are not probative.

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 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

² The medical center documents reflect the birth dates of [REDACTED] and [REDACTED] as January 30, 1983 and August 9, 1985, respectively.

³ The applicant's I-698 application has been denied.

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.