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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

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FILE:



Office: LOS ANGELES

Date: FEB 17 2010

MSC 05 160 10136

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

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

The director states that the applicant was granted lawful temporary residence status under section 245A of the Immigration and Nationality Act (Act) on August 23, 2005. On May 14, 2008, the director issued a Notice to Intent to Terminate (NOIT) in accordance with the regulations at 8 C. F. R. § 245a.2(u)(2)(i). In the NOIT, the director noted that the applicant denied ever having been outside the United States during the requisite period, and that the residence information provided by the applicant on the Form I-687 is inconsistent with other immigration filings by, or on behalf of, the applicant. The director terminated the applicant's status indicating that the applicant failed to respond to the NOIT.

On appeal, counsel states that a response to the NOIT was mailed to the director. Counsel provided a copy of the response on appeal stating that the inconsistencies noted by the director in the NOIT were not the fault of the applicant and that the applicant has established his eligibility for temporary resident status.

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).

United States Citizenship and Immigration Services (USCIS) records reveal that the applicant filed a Form I-698, Application to Adjust Status from Temporary to Permanent Resident, on November 13, 2005 after being granted lawful temporary permanent residence under section 245A of the Act. The Form I-698 was rejected because the applicant's temporary resident status was terminated as indicated above.

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 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. The record contains the following evidence which is material to the applicant’s claim:

- The applicant provided an affidavit from [REDACTED] in support of his application. [REDACTED] states that the applicant is his brother and has resided in the United States throughout the requisite period. The affiant provides mailing addresses for the applicant from October of 1981 through December of 2002, and states that the applicant played African drums during shows performed by the affiant.

As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. The affidavit provided does not provide detailed evidence establishing how the affiant knew the applicant, the details of their association or relationship, or detailed accounts of an ongoing association establishing a relationship under which the affiant could be reasonably expected to have personal knowledge of the applicant’s residence, activities and whereabouts during the requisite period covered by the applicant’s Form I-687. To be considered probative, 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. The affidavits must contain sufficient detail, generated by the asserted contact with the applicant, to establish that a relationship does in fact exist, how the relationship was established and sustained, and that the affiant does, by virtue of that relationship,

have knowledge of the facts asserted. The affidavit submitted by the applicant, therefore, is not deemed probative and is of little evidentiary value.

It should further be noted that various immigration filings by, or on behalf, of the applicant contradict the residence information provided by the applicant in the Form I-687. The applicant indicates on the Form I-687 that he has resided in the United States since October of 1981. [REDACTED], the applicant's brother, filed a Form I-130 petition on behalf of the applicant on March 8, 2001 [REDACTED] stating, under penalty of perjury, that the applicant arrived in the United States as a stowaway in January of 2000. [REDACTED], the applicant's spouse, filed a Form I-130 petition on behalf of the applicant on October 19, 2001 ([REDACTED]) stating, under penalty of perjury, that the applicant arrived in the United States as a stowaway in January of 2000. The applicant completed a Form G-325A biographic information form ([REDACTED]) on September 30, 2001 stating that he resided in Cameroon from his birth until October of 1999. He also states on the Form G-325A that he worked in Cameroon as a driver from 1996 until October of 1999. The only explanation offered by the applicant for the discrepancies is that the referenced forms were completed by other individuals and contain inaccurate information. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The only other evidence submitted by the applicant in support of his application is his personal statement. The applicant's statement, however, in the absence of other credible and relevant evidence establishing that he resided in the United States throughout the requisite period, will not sustain his claim. As previously noted, in order 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).

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of his claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the applicant's reliance upon documents with minimal probative value, it is concluded that the evidence submitted fails to establish continuous residence in an unlawful status in the United States during the requisite period.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that she 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. Any temporary resident status previously granted to the applicant is terminated.



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