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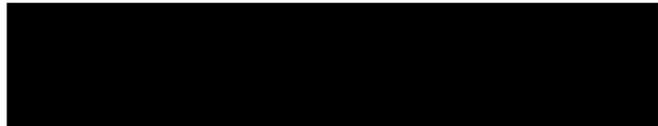
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529 - 2090



U.S. Citizenship and Immigration Services

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FILE: [Redacted]  
MSC-05-011-10807

Office: LOS ANGELES

Date:

**FEB 19 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:

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 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 submitted one additional document 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 the duration 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 she dates her initial meeting with the applicant or specify social gatherings, other special occasions or social events when she saw and communicated with the applicant during the requisite period. The witness also does not state how frequently she had contact with the applicant during the requisite period. The witness does not

provide sufficient details that would lend credence to her 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 her assertions are probably true.

Further, the witness states that she has known the applicant since 1978. The statement of the witness is inconsistent with the testimony of the applicant in the I-687 application, in which the applicant states that he last entered the United States in September 1981, and lists residences in the United States beginning in September 1981. Due to this inconsistency, the statement of the witness has minimal probative value.

The applicant has submitted a letter from [REDACTED] school custodian of record for the Inglewood Unified School District. The letter states that the applicant was enrolled in Woodworth Elementary from 1981 to 1983, Crozier Middle School from September 1983 to 1986, and Lennox High School from 1986 for the duration of the requisite statutory period. The record also contains a copy of a transcript from a different school district, the Compton Unified School District. 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). Although the transcript states that the applicant entered the Compton Unified School District in 1986, it does not record the applicant as having attended any classes during the requisite period.<sup>1</sup> Due to these inconsistencies, these documents have minimal probative value. In addition, it appears that information on the transcript has been altered with whiteout to state the applicant's name and a date of entry into the school district during the requisite statutory period.<sup>2</sup> This alteration is material to the applicant's claim, in that it has a direct bearing on the applicant's residence during the requisite period. 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). This alteration 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.

The record contains a copy of an immunization record. 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 immunization record shows immunizations administered on May 3, 1982, July 13, 1982 and January 4, 1983 at a health center in Torrance, California. However, it does not appear that the information on the form was entered on the stated dates, since the form has a revision date of January 1988. Although this document would be some evidence of the applicant's presence in the United States on May 3, 1982, July 13, 1982 and January 4, 1983, due to this inconsistency the document has minimal probative value.

On appeal, the applicant has submitted a report of a tuberculin skin test performed on December 19, 1981 and read on December 20, 1981. The address listed for the applicant on the report is [REDACTED]. This address is inconsistent with the residence addresses stated by the applicant in the instant I-687 application, in which the applicant states that he resided on [REDACTED] in

<sup>1</sup> The transcript lists the applicant's attendance in classes from 1989 to 1990 at Lennox High School, where the applicant is stated to have attended 9<sup>th</sup> and 10<sup>th</sup> grade.

<sup>2</sup> The form also states an incorrect date of birth for the applicant of July 29, 1973 instead of July 29, 1972.

Inglewood, California, for the duration of the requisite period.<sup>3</sup> Although this document would be some evidence in support of the applicant's presence in the United States on December 19, 1981 and December 20, 1981, due to this inconsistency this document has minimal probative value.

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 1994 to establish the applicant's CSS class membership, a Form I-130, petition for alien relative filed on the applicant's behalf by his father, and a Form I-698, application to adjust status from temporary to permanent resident.<sup>4</sup> The AAO finds in its *de novo* review that the record of proceedings contains materially inconsistent statements from the applicant regarding his residences in the United States, and initial entry into and absences from the United States during the requisite statutory period.

In the instant I-687 application the applicant stated that he last entered the United States in September 1981. He listed one residence in the United States from September 1981 for the duration of the requisite statutory period, on [REDACTED] in Inglewood, California. The applicant listed one absence from the United States during the requisite statutory period, from November 1987 to December 1987. However, at the time of his interview on the instant I-687 application the applicant stated that he did not know the date of his first entry into the United States.

In the initial I-687 application, the applicant stated that he last entered the United States on July 30, 1980. The applicant did not list any absences from the United States during the requisite statutory period. The applicant listed residences in the United States beginning in May 1987 to October 1987 in Bell, California, and from October 1987 for the duration of the requisite statutory period on [REDACTED] in Compton, California.

In the I-130 petition, the applicant is stated as having arrived in the United States on March 25, 1989. This is inconsistent with the testimony of the applicant in the I-687 application, in which the applicant does not list any absences from the United States in 1989.

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 stated that he entered the United States in 1980. 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 entry into, residences in, and absences from 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

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<sup>3</sup> In the initial I-687 application, filed in 1994 to establish the applicant's CSS class membership, the applicant states that he lived at [REDACTED] in Compton, California from October 1987 for the duration of the requisite statutory period.

<sup>4</sup> The applicant's I-698 application has been rejected and administratively closed, based upon the termination of the applicant's temporary resident status.

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 residence and 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 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.