

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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**

PUBLIC COPY

41

[REDACTED]

FILE: [REDACTED] Office: LOS ANGELES Date: JAN 14 2010
MSC-05-087-10017

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 termination of the applicant's temporary resident status by the director of the Los Angeles office is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director terminated the temporary resident status of the applicant 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.¹

On appeal the applicant asserts that the director's decision is erroneous because the evidence that the applicant 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 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 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

¹ The applicant's Form I-698, application to adjust status from temporary to permanent resident, was administratively closed based upon the director's termination of the applicant's temporary resident status.

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 witness statements 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 the witness statements of [REDACTED] and [REDACTED]. The statements are general in nature and state that the witnesses have knowledge of the applicant's residence in the United States for all, or a portion of, the requisite period.

Although the witnesses claim to have personal knowledge of the applicant's residence in the United States during the requisite period, the witness statements do 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 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. 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 witnesses do not state how they date their initial meeting with the applicant or specify social gatherings, other special occasions or social events when they saw and communicated with the applicant during the requisite period. The affiants also do not state how frequently they had contact with the applicant during the requisite period. The affiants do not provide sufficient details that would lend credence to their claimed knowledge of the applicant's residence in the United States during the requisite period. For these reasons the AAO finds that the witness statements do not indicate that their assertions are probably true.

The applicant has submitted copies of W-2's and the first pages of federal income tax returns for the years 1982 through 1988. The applicant has not submitted any evidence from the Internal Revenue Service that the tax returns were actually filed. In addition, at the time of his interview the applicant stated that he could not remember the exact dates when he worked for [REDACTED] and [REDACTED], and did not provide a description of his work duties at either place of employment. The applicant stated that he worked for [REDACTED] from 1981 until 1983, and for [REDACTED] from 1983 for five years. However, the testimony of the applicant at the time of his interview is inconsistent with the testimony of the applicant on the instant I-687 application, in which the applicant states that he worked for [REDACTED] as a general helper from June 1981 to December 1984, and for Indy [REDACTED] as a cook from April 1985 for the remainder to the requisite period. Due to these inconsistencies, these tax documents have minimal probative value.

The record also contains a copy of a notice of an undelivered refund check for the 1986 tax year. 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 in support of the applicant's presence in the United States in 1986.

The record contains copies of pay stubs from [REDACTED] for the period of time from August 29, 1986 to April 29, 1988. However, these pay stubs fail to provide any information that would serve to link them to the applicant, such as his name and address. Therefore these documents have minimal probative value.

The applicant also submitted copies W-2's and the first pages of joint federal income tax returns for his parents for the years 1981 through 1984. The applicant has also submitted a copy of the first page of a joint California state income tax return for 1983. These returns claim the applicant as a dependent. 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 applicant has not submitted any evidence from the Internal Revenue Service that these tax returns were actually filed.

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 CSS class membership, a Form I-485, application to adjust to permanent resident status under the Legal Immigration Family Equity (LIFE) Act, two Forms I-130, petition for alien relative, a Form I-140, petition for prospective immigrant employee, a Form I-817, application for family unity benefits, and a Form I-698, application to adjust status from temporary to permanent resident. The AAO finds in its *de novo* review that the

record of proceedings contains materially inconsistent statements from the applicant regarding his absences from the United States during the requisite statutory period.

At an interview on April 29, 2008, the applicant stated that he first entered the United States in 1981. At part 32 of the instant I-687 application, and at part 35 of the initial I-687 application, the applicant listed one absence from the United States during the requisite statutory period, when he returned to Mexico from February 1988 to March 1988. In the instant I-687 application, the applicant listed residences in the United States from February 1981 for the duration of the requisite period, and the applicant listed employment in the United States from June 1981 to December 1984, and from April 1985 for the duration of the requisite period.

However, at part 13 of the I-140 petition, filed by the employer [REDACTED] on August 28, 1989 for the position of an assembler, the applicant is stated as having arrived in the United States in 1986.² In addition, in a Statement of Qualifications of Alien, signed by the applicant on August 4, 1989, the applicant stated that he worked as an assembler for a company in Mexico from May 1985 until January 1986. Further, an employment verification letter from the Mexican employer, [REDACTED] states that the applicant worked for the company from February 1985 until January 1986. In a letter dated June 29, 2008, the applicant stated that the dates of his employment in Mexico, listed in the I-140 petition and in the Mexican job verification letter, were incorrect, and were only stated to meet the requirements of the assembler position with [REDACTED]. Further, in an I-485 application, at part 1, the applicant states that he last arrived in the United States on April 5, 1985. Finally, in an I-817 application, signed by the applicant on June 28, 2002, at part 3(1)(b) the applicant stated that he last arrived in the United States in 1985.

The director of the Los Angeles office cited 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 was submitted in good faith, and 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 new evidence in response to the NOIT.

The inconsistencies regarding the dates the applicant resided and worked in, and was absent 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 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. 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

² In the instant I-687 and in the initial I-687, the applicant listed employment with [REDACTED] from April 1985, but he lists his position as a cook.

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*. As the applicant has not overcome the basis for the termination of status the applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

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.

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