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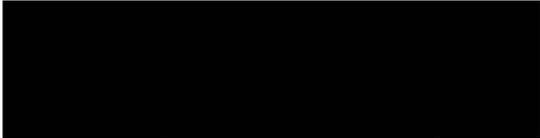
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529 - 2090



**U.S. Citizenship
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FILE: [Redacted] MSC-06-098-12094

Office: HOUSTON

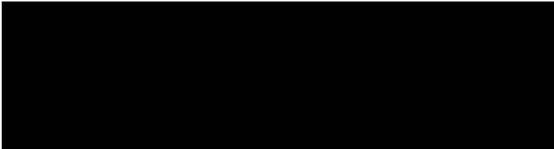
Date:

JAN 14 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:



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 Houston 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, granted pursuant to the terms of the CSS/Newman Settlement Agreements. The director found 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, counsel for the applicant asserts that the director's decision is erroneous, since the applicant is not ineligible for temporary resident status as set forth in 8 C.F.R. § 245a.2(c). However, as stated below, in addition to proving that he or she is admissible to the United States under the provisions of section 245A of the Act, 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. 8 C.F.R. § 245a.2(d)(5). 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 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).

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

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 several witness statements. The AAO has reviewed the witness statements 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 statement of [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 an 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 applicant has submitted copies of employment verification letters from [REDACTED], [REDACTED], and [REDACTED].

The employment verification letters do not meet the requirements set forth in the regulations, which provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment. The regulation at 8 C.F.R. § 245a.2(d)(3)(i) provides that letters from employers must include: (A) Alien's address at the time of employment; (B) Exact period of employment; (C) Periods of layoff; (D) Duties with the company; (E) Whether or not the information was taken from official company records; and (F) Where records are located and whether the Service may have access to the records. If the records are unavailable, an affidavit-form letter stating that the alien's employment records are unavailable and why such records are unavailable may be accepted in lieu of subsections (E) and (F). The employment verification letters fail to comply with the above cited regulation because they lack considerable detail regarding the applicant's employment. For instance, the witnesses do not state the applicant's daily duties as a laborer, the number of hours or days he was employed, or the location at which he was employed. Furthermore, the witnesses do not state how they were able to date the applicant's employment. It is unclear whether they referred to their own recollection or any records they may have maintained. For these reasons, the employment verification letters are of little probative value.

Further, the record of proceedings reflects that in the I-687 application, at part 33, the applicant states that he was self-employed as a bricklayer in Rosenberg, Texas from November 1981 to January 1986, and worked for [REDACTED] as a bricklayer in Houston from February 1986 for the duration of the requisite statutory period. However, the testimony of the applicant in the I-687 application is inconsistent with the testimony of [REDACTED] who states that the applicant worked for him on a part-time basis from 1987 for the duration of the requisite period, cleaning, landscaping, mowing and doing general labor. In the I-687 application, the applicant does not list any employment with [REDACTED] during the requisite statutory period.² This is an inconsistency which is material to the applicant's claim in that it has a direct bearing on the applicant's residence in

² In addition, at the time of his interview, the applicant stated that he worked for [REDACTED] during the period from 1988 to 2003, while the employment verification letter of [REDACTED] states that the applicant worked for him until at least the date the letter was attested to, on December 28, 2005. While outside of the requisite time period, the inconsistency calls into question the applicant's continuous residence in the United States during the requisite period.

the United States for the duration of the requisite period. As stated above, 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, supra*. This contradiction 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 director of the Houston office cited the aforementioned inconsistencies in a notice of intent to terminate (NOIT) the applicant's temporary residence. In rebuttal to the NOIT, counsel for the applicant asserted that the evidence which the applicant previously submitted established 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 remaining evidence in the record is comprised of copies of the applicant's statements, the I-687 application and a Form I-698, application to adjust status from temporary to permanent resident. As stated previously, 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 the evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6). The AAO finds in its *de novo* review that 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 dates the applicant worked at a particular location 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. 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*. 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.

Further, the record reveals that on February 4, 1996 the applicant was charged with one count of *Driving Under the Influence*, and was subsequently convicted of this charge, a misdemeanor. (Court of Fort Bend County, Texas, case number 67052). In addition, on July 2, 1992, the applicant was charged with one count each of *Display Fictitious License Plate, No Liability Insurance, and No Driver License*. The current sections of the Texas Transportation Code pertaining to these charges, §§ 502.409, 601.191, and 521.025, respectively, list these charges as misdemeanors. The record does not contain court dispositions for these three charges.

For this reason alone, the application cannot be approved. The applicant's declaration in the I-687 application that he does not have multiple criminal convictions, and in the I-698 application that he has never been arrested, is subject to verification by United States Citizenship and Immigration Services (USCIS). The applicant must agree to fully cooperate in the verification process. Failure to assist USCIS in verifying the information necessary for the adjudication of the application may result in a denial of the application. 8 C.F.R. § 245a.2(k)(5). **The applicant failed to submit a final court disposition for the three offenses in 1992.**

An alien who has been convicted of a felony or three or more misdemeanors in the United States is ineligible for temporary resident status. 8 C.F.R. § 210.3(d)(3).

"Felony" means a crime committed in the United States punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except when the offense is defined by the state as a misdemeanor, and the sentence actually imposed is one year or less, regardless of the term such alien actually served. Under this exception, for purposes of 8 C.F.R. Part 245a, the crime shall be treated as a misdemeanor. 8 C.F.R. § 245a.1(p).

"Misdemeanor" means a crime committed in the United States, either (1) punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or (2) a crime treated as a misdemeanor under 8 C.F.R. § 245a.1(p). For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor. 8 C.F.R. § 245a.1(o).

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, continuously resided in an unlawful status in the United States for the requisite period, and is otherwise eligible for adjustment of status, as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M--*, *supra*. The applicant has failed to establish that he maintained continuous residence in the United States throughout the statutory period, and that he does not have disqualifying criminal convictions. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis. 8 C.F.R. § 245a.18(a)(1).

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