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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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**U.S. Citizenship
and Immigration
Services**



41

FILE: [REDACTED]
SRC 01 131 55172

Office: TEXAS SERVICE CENTER

Date: **JAN 28 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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application for temporary resident status was denied by the Director, Texas Service Center. It is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director denied the application because it was determined that the applicant had not established by a preponderance of the evidence that he had continuously resided in the United States prior to 1984.

On appeal, counsel puts forth some of the same arguments that were submitted in response to the Notice of Intent to Deny, and considered by the director in his decision to deny the application. Counsel asserts that no derogatory evidence has been proffered by the director in opposition to the positive evidence the applicant has offered. Counsel asserts that the director is disregarding the evidence presented and is simply denying it as part of a broader pattern of denials. Counsel asserts that the letter and affidavits demonstrated that the applicant had entered the United States prior to January 1, 1982 and remained here.

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).

An alien applying for adjustment of status 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. *See* 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 including affidavits 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.* 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 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.

In this instance, the applicant submitted evidence, including contemporaneous documents, which tends to corroborate his claim of residence in the United States from 1984 through the date he filed his application. At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his burden of establishing continuous unlawful residence in the United States from prior to 1984.

At the time the applicant filed his Form I-687 application, he presented no evidence to establish his initial entry and continuous residence in the United States prior to 1984. On his Form I-687 application, the applicant claimed employment as a laborer with [REDACTED] from November 1981 to March 1984. The applicant claimed residence in the United States from January 1982 to January 1985 at [REDACTED]

In response to a Notice of Intent to Deny dated February 23, 2009, the applicant, in an attempt to establish continuous unlawful residence in the United States from prior to 1984, submitted:

- A statement from [REDACTED] (last name indecipherable), who indicated that she was the landlord of the premises at [REDACTED] and that the applicant resided with his family at this address from March 1982 to November 1987. The affiant indicated that she managed the apartment building where the applicant resided commencing in June 1984.
- An affidavit from [REDACTED] who indicated that he has known the applicant since he was 12 years old in November 1981. The affiant indicated that the applicant would come to his house and do odd jobs. The affiant attested to the applicant’s move to Bellville, Texas, in March 1984.
- Affidavits from [REDACTED] and [REDACTED] who indicated that they have known the applicant since 1983. [REDACTED] indicated that she used to cut the applicant’s hair. The affiants attested to the applicant’s moral character.
- An affidavit from [REDACTED] who indicated that she has known the applicant since 1982 and attested to the applicant’s moral character.
- Affidavits from [REDACTED] and [REDACTED], who indicated that they

have known the applicant since 1981. [REDACTED] indicated that the applicant and her brothers were on a local soccer team. The affiants attested to the applicant's moral character.

- An affidavit from [REDACTED] who indicated that she has known the applicant since 1981 and attested to the applicant's residence in Sealy Texas since that time. The affiant indicated during that time she was employed at Sunshine Cleaners and the applicant would talk to her "every time he dropped or picked up his clothes at the cleaners."
- An affidavit from [REDACTED] who indicated that she has known the applicant since 1982 and that the applicant would play with her younger brother on the weekends. The affiant attested to the applicant's moral character.
- A letter from [REDACTED] in Sealy, Texas, who indicated that the applicant used to attend church services from 1982 to 1989.
- A letter from [REDACTED] in Houston, Texas, who attested to the applicant's moral character.
- An affidavit from [REDACTED] who indicated that he has known the applicant since 1981 through "youth activities in church and have been in contact ever since." The affiant indicated that the applicant has been a good friend of his sons since 1981.

The applicant asserted that upon his arrival in the United States in late 1981, he resided with his sisters in Sealy, Texas until he moved to Connecticut in 1989.

Counsel indicated that a letter from [REDACTED] was being submitted claiming she has known the applicant since 1980 and that she used to cut the applicant's hair. A review of the letter, however, reflects that [REDACTED] is a notary public, who notarized the affidavit of [REDACTED] [REDACTED] in her affidavit, indicated that she resided in Sealy, Texas since 1980 and she had known the applicant since 1983, and used to cut the applicant's hair.

The director determined that the affidavits submitted failed to demonstrate that the affiants had direct personal knowledge of the events testified to in their respective affidavits. The director further noted that the applicant had not provided any school records or an explanation why no records were provided. The director concluded that the applicant had failed to submit sufficient credible evidence establishing his continuous residence in the United States prior to 1984 and, therefore, denied the application on March 30, 2009.

The brief issued by counsel on appeal has been considered. The evidence of record submitted does not establish with reasonable probability that the applicant was already in the United States before January 1, 1982, and that he resided in a continuous unlawful status through 1983 as he has presented contradictory and inconsistent documents, which undermines his credibility.

The affidavit from the landlord, [REDACTED] raises questions to its authenticity as the affiant indicated that the applicant resided with his family in Sealy, Texas at [REDACTED] from March

1982 to November 1987. However, the applicant did not claim on his Form I-687 application to have resided at this address during the period in question. As conflicting information has been provided, it is reasonable to expect an explanation in order to resolve the contradictions; however, none has been provided.

The letter from [REDACTED] has little evidentiary weight or probative value as it does not conform to the basic requirements specified in 8 C.F.R. § 245a.2(d)(3)(v). Most importantly, the pastor does not explain the origin of the information to which he attests. In addition, the applicant did not list any affiliation with a religious organization during the requisite period at item 34 on his Form I-687 application.

The affidavit from [REDACTED] raises questions to its credibility as the affiant claimed to have known the applicant since November 1981 and attested to the applicant's move to Bellville, Texas in March 1984. The applicant, however, did not claim on his application residence in Bellville, Texas until January 1985.

The evidence must be evaluated not by the quantity of evidence alone but by its quality. The remaining affiants' statements do not provide detailed accounts of an ongoing association establishing a relationship under which the affiants could be reasonably expected to have personal knowledge of the applicant's residence, activities and whereabouts during the requisite period. To be considered probative, an affiant's affidavit 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 affidavit 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 affidavits from the affiants do not provide sufficient detail to establish that they had an ongoing relationship with the applicant that would permit them to know of the applicant's whereabouts and activities throughout the requisite period.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I. & N. Dec. 582 (BIA 1988).

The inconsistencies along with the absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detract 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 he 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.

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