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FILE:



Office: HOUSTON

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[consolidated herein]

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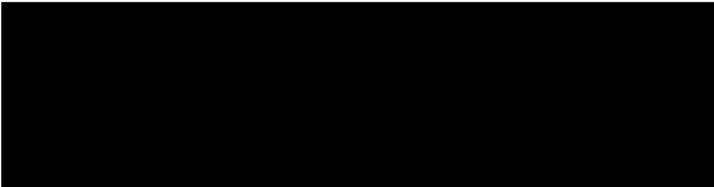
IN RE:

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:



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 J. Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application for temporary resident status under Section 245A of the Immigration and Nationality Act (Act) was terminated by the Director, Houston, Texas. The decision to terminate is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined that subsequent investigation shows that the applicant submitted insufficient or conflicting information regarding his initial entry into the United States and his continuous unlawful residence in the country that undermined the credibility of the initial evidence relied upon by the director to approve the applicant's temporary residence status on October 12, 2006. The director terminated the applicant's temporary resident status, finding that the applicant had failed to present sufficient credible evidence to show that he entered the United States prior to January 1, 1982 and resided in a continuous unlawful status during the requisite period as required in 8 CFR 425a.2(b)(1). Specifically, the director determined that the applicant was absent from the United States for more than 45 days during the requisite period and was therefore, not eligible to adjust status under section 245A of the Act.

On appeal, the applicant asserts that the director did not question the credibility of the documents he submitted when the director initially approved his application, and that to terminate his status at this time is inherently unfair and contrary to the legalization guidelines. The applicant did not submit additional evidence with the appeal.

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 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).

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. 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.

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 (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 applicant, a native of Mexico who claims to have lived in the United States since November 1981, submitted a Form I-687, Application for Status as a Temporary Resident under section 245A of the Immigration and Nationality Act (Act), and Form I-687 Supplement, CSS/Newman Class Membership Worksheet on July 6, 2005. The application was approved on October 12, 2006. The director, Houston, Texas, subsequently terminated the applicant’s temporary resident status on March 23, 2009.

In a Notice of Intent to Terminate (NOIT) dated January 9, 2009, the director noted that the applicant submitted insufficient or conflicting information in the record that contradicted his prior statements and undermined the veracity of his claim that he had continuously resided in the United States from before January 1, 1982 through the requisite period. The applicant was granted 30 days to submit rebuttal evidence.

The applicant responded and on March 23, 2009, the director issued a Notice of Termination (NOT) terminating the applicant’s temporary resident status based on the grounds that the information and documentation submitted were insufficient to overcome the grounds for termination.

On appeal, the applicant asserts that the director did not question the credibility of the documents he submitted when the director initially approved his application, and that to terminate his status at this time is inherently unfair and contrary to the legalization guidelines. The applicant did not submit additional evidence with the appeal.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) (“On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.”); see also, *Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO’s *de novo* authority has been long recognized by the federal courts. See, e.g. *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he entered before January 1, 1982 and resided continuously in the United States in an unlawful status through the requisite period. The documentation submitted by the applicant in

support of his application consists primarily of letters and affidavits from individuals who claim to have employed, provided accommodation to or otherwise known the applicant in the United States during the requisite period, as well as copies of various receipts allegedly issued to the applicant in the United States during the early 1980s.

The AAO has reviewed each document in its entirety to determine the applicant's eligibility.

The record includes (1) a letter from [REDACTED] Houston, Texas, dated October 3, 2006, stating that the applicant "has given testimony that he has been a member of this church since 1981 and that he has always been very committed and an active parishioner," and (2) a letter by [REDACTED] New York City, dated October 2, 2006, stating that the applicant "is a Maryknoll contributor. He has been a donor since October 5, 2000."

The letters listed above do not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(v), which specifies that attestations by religious and related organizations (A) identify the applicant by name, (B) be signed by an official (whose title is shown), (C) show inclusive dates of membership, (D) state the address where the applicant resided during the membership period, (E) include the organization seal impressed on the letter or the letterhead of the organization, (F) establish how the author knows the applicant, and (G) establish the origin of the information about the applicant. The letters did not specify whether the applicant was a member of their organizations and the precise dates of membership, did not indicate where the applicant lived during the period he was associated with the organizations. [REDACTED] indicated that the information on his letter was based on the information the applicant provided to him, and [REDACTED] did not indicate how acquired his information about the applicant. Neither of the clergymen indicated when and how they met the applicant. Since the letters do not comply with sub-parts (C), (D), (F), and (G) of 8 C.F.R. § 245a.2(d)(3)(v), the AAO concludes that the letters have little probative value. They are not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through the requisite period.

The affidavits in the record have minimalist or fill-in-the-blank format with very few details about the applicant's life in the United States and the nature and extent of their interactions with him over the years. The affiants do not seem to have a direct personal knowledge of the events and circumstances of the applicant's residence in the United States during the requisite period. The affidavits are not accompanied by any documentary evidence – such as photographs, letters, and the like – of the affiants' personal relationships with the applicant in the United States during the 1980s. The affiants did not submit documents to establish their identities or their residence in the United States during the requisite period.

[REDACTED] claims that she provided room and board to the applicant since December 1983, but did not provide the specific address where the applicant resided. [REDACTED] claims that he met the applicant in December 1981, and that he employed the applicant on a part time basis from June 1984 to December 1988. [REDACTED] did not provide the address where the applicant resided during the years he had known him, did not indicate whether his information about the applicant was

based on company records, where the records are kept and whether the records are available for verification. Neither [REDACTED] nor the applicant provided copies of W-2s, pay stubs or tax records to verify the applicant was so employed during the years indicated. For all the reasons discussed above, the letters and affidavits have little probative value. They are not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through the requisite period.

As for the copy of the merchandise receipt dated April 10, 1982, addressed to the applicant at [REDACTED] it does not appear to be genuine. The address on the receipt is contrary to the address provided by the applicant on the Form I-687 he filed on July 6, 2005. On the form, the applicant indicated his address as [REDACTED] from November 1981 to December 1983. The inconsistency undermines the credibility of the receipt as evidence of the applicant's residence in the United States during the requisite period.

The AAO notes that contrary to the applicant's claim that he first entered the United States in November 1981, resided continuously in the country through the requisite period, except for one brief trip to Mexico within the month of September 1987, a copy of a Form I-213 (Record of Deportable Alien) completed by a United States Immigration and Naturalization Service (INS) officer on October 5, 1992, indicates otherwise. The applicant did not claim any other trips outside the United States during the 1980s. On the Form I-213, the applicant stated that his last entry into the United States was in 1988. This statement is contrary to the information provided by the applicant on the Form I-687 application he filed in July 2005. The applicant did not claim any absence from the United States in 1988 that would have explained the applicant's statement that he last entered the United States in 1988. The contradiction calls into serious question the veracity of the applicant's claim that he entered the United States before January 1, 1982 and resided continuously in the country through the requisite period.

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 without competent objective evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record.

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.

Based on the analysis of the evidence in the record, the AAO concludes that 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.