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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



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Services

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FILE:



Office: HOUSTON

Date:

MAR 02 2010

[consolidated herein]

MSC 05 355 14100

MSC 09 223 23011 – APPEAL

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 conflicting information regarding her initial entry into the United States and her 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 April 29, 2006. The director terminated the applicant's temporary resident status, finding that the applicant had failed to present sufficient credible evidence to show that she 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) and was, therefore, not eligible to adjust to temporary resident status.

On appeal, counsel asserts that the director did not properly evaluate the documents submitted by the applicant in support of her application. In counsel's view, the evidence in the record is sufficient to establish that the applicant meets the continuous residence requirement to adjust status under section 245A of the Act.

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 Honduras who claims to have lived in the United States since February 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 September 20, 2005. The application was approved on April 6, 2006. Subsequently, the director, Houston, Texas, terminated the applicant’s temporary resident status.

In a Notice of Intent to Terminate (NOIT) dated January 12, 2009, the director noted that the applicant submitted conflicting information and documentation regarding her initial entry and her continuous residence in the United States that contradicted her prior statements and undermined the veracity of her claim that she 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 April 2, 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 in response to the NOIT were insufficient to overcome the grounds for termination.

On appeal, counsel asserts that the director did not properly evaluate the documents submitted by the applicant in support of her application. In counsel’s view, the evidence in the record is sufficient to establish that the applicant meets the continuous residence requirement to adjust status under section 245A of the Act.

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 her application consists primarily of letters and affidavits from individuals who claim to

have employed, lived with or otherwise known the applicant in the United States during the requisite period, as well as envelopes addressed to the applicant at the addresses he claimed in the United States.

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

The record reflects that contrary to the applicant's assertion that she entered the United States in February 1981 and resided continuously in the country through the requisite period, other documentation in the record indicates otherwise. The record reflects that the applicant was apprehended by the officers of the then Immigration and Naturalization Service (INS) on January 15, 1989, while attempting to enter the United States through Brownsville, Texas. The applicant indicated that it was her first entry into the United States. The applicant was placed in removal proceedings, issued a Notice to Appear (NTA) and released. The applicant subsequently completed a Form I-589 (asylum application) on January 17, 1989. On the same day, the applicant also completed a Form G-325A (Biographic Information) with the Form I-589. On the Form G-325A, the applicant indicated her residence for the last five years as well as her last residence outside the United States of more than one year as [REDACTED] from January 1961 to January 1989. By her own admission, the applicant did not enter or reside in the United States until January 1989. Therefore, the applicant has failed to meet the continuous residence requirement to adjust status under section 245A of the Act.

The record includes a copy of an identification card issued to the applicant in Honduras on June 25, 1984. On the Form I-687 the applicant indicated that she was absent from the United States only once during the 1980s – a trip to El Salvador to visit her daughter within the month of September 1987. The applicant did not account for her trip in Honduras in 1984 when she was issued the identity card or her trip outside the United States that resulted in her apprehension at the border in January 1989.

The documents above call into serious question the credibility of the letters and affidavits in the record attesting to the applicant's residence in the United States during the 1980s as well as the envelopes submitted by the applicant as evidence of his residence in the United States during the requisite period. Also, the contradictions in the record regarding the applicant's first entry into the United States (1981 or 1989), and the lack of objective evidence to establish when the applicant entered the United States, cast considerable doubt on the veracity of the applicant's claim that she continuously resided in the United States from before January 1, 1982 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. *See id.*

The envelopes which the applicant claims were mailed to her during 1981 through 1986, were addressed to the applicant at [REDACTED]. This address is in direct conflict with the address claimed by the applicant on the Form I-687 for the same period. The applicant listed her

address as follows: [REDACTED], from March 1981 to March 1984, and [REDACTED] from March 1984 to August 1988. As previously indicated doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See Matter of Ho, id.* Thus, the envelopes have little probative values as credible evidence of the applicant's residence in the United States during the requisite period.

The copies of money order receipts from Fidelity Express as well as other receipts in the record bear the applicant name but no address. Thus, the receipts have little probative value as evidence of the applicant's residence in the United States during the requisite period.

As for the affidavits in the record, they 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 her 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 and their residence in the United States during the requisite period. For all the reasons discussed above, the AAO determines that the 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 fully discussed above, the applicant has submitted conflicting statements and documents in support of her application. The applicant has not provided any objective evidence to explain or reconcile the contradictions. Therefore, all other documents in the record attesting to the applicant's residence in the United States during the 1980s are suspect and not credible. Thus, it must be concluded that the applicant has failed to establish her 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 she 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 she 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.