



U.S. Citizenship
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MAR 05 2010

[consolidated herein]

MSC 05 298 10828

MSC 09 223 23004 – APPEAL

IN RE:

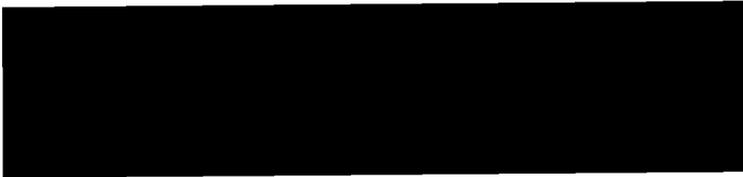
Applicant:



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 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 October 10, 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 applicant 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 for the requisite period.

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 July 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 25, 2005. The application was approved on October 10, 2006. Subsequently, the director, terminated the applicant’s temporary resident status.

In a Notice of Intent to Terminate (NOIT) dated January 13, 2009, the director noted that the applicant submitted conflicting information in the record 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 on the grounds that the information and documentation submitted are insufficient to overcome the grounds for termination.

On appeal, counsel asserts that the applicant 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 for the requisite period.

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 she entered before January 1, 1982 and resided continuously in the United States in an unlawful status through the requisite period. Here, the applicant has failed to meet her burden.

The record reflects that some documents submitted by the applicant credibly establish that the applicant was residing in the United States during part of the requisite period. For instance, copies of school transcripts from Westfield High School, Texas, for the school years 1986 to 1988, as well as

copies of student identity cards from the same school for the years 1985 to 1988, are credible evidence that the applicant was residing in the United States since 1985. The AAO will focus its review in this proceeding on documentation submitted by the applicant to establish her residence in the United States from before January 1, 1982 through the end of 1984.

The record reflects that contrary to the applicant's claim that she entered the United States in 1981 and resided continuously in the country since then, other documents in the record indicate otherwise. The record includes a copy of a Form G-325A (Biographic Information) dated December 26, 1999, which the applicant submitted with a Form I-485 (application to Register Permanent Residence or Adjust Status) on January 10, 2000. On that form the applicant indicated her last address outside the United States of more than one year as – [REDACTED] from September 1975 to July 1985. On a Form I-130 (Petition for Alien Relative) filed on the applicant's behalf on October 26, 1993, the petition indicated that the applicant entered the United States on May 2, 1985. On the Form I-687 application the applicant completed on June 25, 1990, and the Form I-687 application she filed in July 2005, the applicant indicated that she was absent from the United States once – from February to March 1988 – to visit her sick grandmother in Mexico. The applicant did not indicate any other absences from the United States during the 1980s.

The documentation discussed above directly contradicts the applicant's claim that she entered the United States before January 1, 1982 and resided continuously in the country through the requisite period. The applicant did not submit any objective evidence to establish her entry into the United States in 1981. Therefore, it is reasonable to conclude that the applicant's first entry into the United States was in 1985.

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. *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 documentation submitted by the applicant in support of her claimed residence from before January 1, 1982, consists primarily of letters and affidavits from individuals who claim to have employed or otherwise known the applicant in the United States during the requisite period as well as a copy of her immunization record.

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

The immunization record submitted by the applicant does not appear to be genuine for the following reasons. First, the record shows that the applicant was administered immunizations on August 19, 1981, October 15, 1981, May 9, 1982 and August 20, 1982, at Montgomery County Health Department in Conroe, Texas. However, the applicant indicated on the Form G-325A she completed December 26, 1999, that she was residing in Mexico from 1975 to 1985. It is not possible that the applicant would have been administered immunizations in the United States while residing in Mexico. Secondly, the record does not bear the applicant's address. The address provided by the applicant on her 2005 Form I-687 since entry was in Houston, Texas, starting in October 1983. The applicant indicated that she continuously resided in Houston, Texas from 1983 through 2005, when she moved to Conroe, Texas. It

is highly unlikely that the applicant would travel from Houston, Texas, to Conroe, Texas, to get immunized at the different dates while living in Houston. Thus, the immunization record has little probative value as evidence that the applicant was residing in the United States in 1981 and 1982, much less for the requisite period.

The employment letter signed by [REDACTED], who identified himself as the owner of [REDACTED] in Conroe, Texas, states that the applicant was employed from December 1981; first as a babysitter and later as a hostess and cashier at his restaurant. The letter does not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because it did not provide the applicant's address during the periods of employment, did not indicate whether the information was taken from company records, and did not indicate whether such records are available for review. The letter is not supplemented by any earnings statements, pay stubs, or tax records from the applicant or the employer demonstrating that the applicant was actually employed during any of the years claimed. The letter did not specify how long the applicant was employed as a babysitter or when she started working at the restaurant.

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. [REDACTED] who identified herself as the applicant's mother, only listed the address claimed by the applicant in the United States and provided no other information whatsoever about the applicant. Finally, the affiants did not submit any documentation to establish their identities and 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.

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.