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U.S. Citizenship
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Services

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MAR 18 2010

FILE: [Redacted] Office: LOS ANGELES Date:
MSC 06 101 25542
MSC 09 150 11032 – APPEAL

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: SELF-REPRESENTED

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, Los Angeles, California. 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 March 2, 2007. 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, the applicant asserts that the director did not properly evaluate the documents she submitted in support of her application. In the applicant's view, the evidence in the record is sufficient to establish that she 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 Mexico who claims to have lived in the United States since April 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 January 9, 2006. The application was approved on March 2, 2007. Subsequently, the director, Los Angeles, California, terminated the applicant’s temporary resident status.

In a Notice of Intent to Terminate (NOIT) dated November 21, 2008, 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 January 5, 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, the applicant asserts that the director did not properly evaluate the documents she submitted in support of her application. In the applicant’s view, the evidence in the record is sufficient to establish that she 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 she 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 photocopies of photographs of the applicant with no date stamps or notation as to when and where the photographs were taken.

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 April 1981 and resided continuously in the country through the requisite period, other documentation in the record indicates otherwise. The record reflects that on the Form I-687 application the applicant filed in January 2006, she indicated that she was absent from the United States only once during the 1980s. The claimed absence was to Mexico within the month of May 1987 for some undisclosed emergency. The applicant did not specify how long she was absent and did not indicate any other trips outside the United States to Mexico during the 1980s. The record contains a birth certificate for [REDACTED], who was born in Mexico on June 26, 1986. The certificate shows that the applicant is his mother. Therefore, based on the applicant's representation on the Form I-687 application she filed in 2006, the applicant could not have continuously resided in the United States during the requisite period when evidence shows that she had a child in Mexico in June 1986. The applicant did not indicate and the evidence does not establish that the applicant's husband was residing with the applicant in the United States during the 1980s. Thus, the birth of the applicant's son in Mexico suggests that the applicant was in Mexico at some time during the years 1985 and 1986 to account for the conception and the birth of the applicant's son in Mexico.

When confronted, the applicant submitted a statement indicating that she did travel to Mexico in 1986 for the birth of her son. The applicant however, did not submit any objective documentation or other evidence to establish when she entered the United States and the dates of her trip to Mexico in 1986 and her return to the United States the same year.

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 letters and affidavits in the record from individuals who claim to have employed, resided with or otherwise known the applicant in the United States during the requisite period have minimalist or fill-in-the-blank format with very little input by the authors. The authors provide 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 authors 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 letters and 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 authors did not submit documents to establish their identities and their residence in the United States during the requisite period.

The individuals who claim to have employed the applicant at various times during the 1980s as their housekeepers did not provide the applicant's residence during the period of employment or at any other time during the 1980s. [REDACTED] claims that he met the applicant in 1983 when he employed her as his housekeeper, that the applicant cleans his house once every two weeks for 5 hours, states that he is aware that the applicant had been residing in the United States prior to 1983. [REDACTED] did not indicate his source of knowledge that the applicant had been residing in the United States prior to 1983 and did not specify when the applicant entered the United States.

The letter from [REDACTED] of St. Thomas the Apostle Catholic Church Parish Community of Faith in Los Angeles, California claims that the applicant "is an active member of our Parish Community and attends our church services." [REDACTED] did not specify the period of the applicant's membership, the applicant's residence during the period of her membership, how and when he met the applicant and whether his information about the applicant was based on his personal knowledge, the church's record or hearsay. For all the reasons discussed above, the AAO determines that 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 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 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 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.