

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529 - 2090

PUBLIC COPY



U.S. Citizenship
and Immigration
Services

L1

[REDACTED]

FILE:

[REDACTED]

Office: LOS ANGELES

Date: SEP 07 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:

[REDACTED]

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 director of the Los Angeles office terminated the temporary resident status of the applicant, pursuant to the terms of the CSS/Newman Settlement Agreements, finding the applicant to be ineligible for temporary resident status based upon both a lack of documentation and inconsistent documentation in the record of proceedings.

On appeal, counsel for the applicant asserts that the evidence which the applicant previously submitted establishes by a preponderance of the evidence that she continuously resided in the United States in an unlawful status for the duration of the requisite time period. On appeal counsel has submitted a brief. The applicant has not submitted any additional evidence on appeal. The entire record was reviewed and considered in rendering this decision.¹

The temporary resident status of an alien may be terminated upon the determination that the alien was ineligible for temporary residence. Section 245A(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1255a(b)(2)(A), and 8 C.F.R. § 245a.2(u)(i).

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 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. 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, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 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

¹ The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

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. *See* 8 C.F.R. § 245a.2(d)(6). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

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. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *Matter of Ho*, 19 I & N Dec. 582, 591-592 (BIA).

The issue in this proceeding is whether the applicant has overcome the inconsistencies in the record and established her eligibility for temporary resident status. As stated, the applicant must establish that she (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status for the requisite period. The documentation that the applicant submits in support of her claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists of witness statements and documents. The AAO has reviewed the witness statements in their entirety to determine the applicant's eligibility; however, the AAO will not quote each statement in this decision. Some of the evidence submitted indicates that the applicant resided in the United States after May 4, 1988; however, because evidence of residence after May 4, 1988 is not probative of residence during the requisite time period, it shall not be discussed.

The record contains witness statements from the following witnesses:

are general in nature and state that the witnesses have knowledge of the applicant's residence in the United States for all, or a portion of, the requisite period.

states that in the summer of 1981 he met the applicant in Acapulco Restaurant in Long Beach, California, when she was working as a waitress and he was her customer. However, the applicant does not list any employment as a waitress at Acapulco Restaurant in the I-687 application.

the applicant's sister, states that the applicant lived with her in Van Nuys from 1980 to

1981, and worked with her at [REDACTED] in Santa Monica in 1980 and 1981.² However, the applicant testified at the time of her interview that she lived in San Pedro from 1980 to 1982, and the applicant did not list any employment with [REDACTED] in Santa Monica in the I-687 application. [REDACTED] states that he worked with the applicant at [REDACTED] in San Pedro in 1986 and 1987. However, the applicant does not list any employment with [REDACTED] in the I-687 application. In addition, at the time of her interview, the applicant stated that she worked for [REDACTED] from June 1983 to June 1984. [REDACTED] states that he first met the applicant in 1986 when she helped her husband at [REDACTED] in San Pedro, but he does not state that he ever employed the applicant. However, the applicant states that she worked for [REDACTED] as a housekeeper from 1986 for the duration of the requisite statutory period.³ Due to these inconsistencies, the statements of these witnesses will be given no weight.

Further, although the remaining witnesses, [REDACTED] claim to have personal knowledge of the applicant's residence in the United States during the requisite period, their witness statements do not provide concrete information, specific to the applicant and generated by the asserted associations with her, which would reflect and corroborate the extent of those associations, and demonstrate that they were a sufficient basis for reliable knowledge about the applicant's residence in the United States during the requisite period. To be considered probative and credible, witness statements must do more than simply state that a witness knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that it probably did exist and that the witness, by virtue of that relationship, does have knowledge of the facts alleged. For instance, the witnesses do not state how they date their initial meeting with the applicant in the United States, or specify social gatherings, other special occasions or social events when they saw and communicated with the applicant during the requisite period. The witnesses also do not state how frequently they had contact with the applicant during the requisite period. The witnesses do not provide sufficient details that would lend credence to their claimed knowledge of the applicant's residence in the United States during the requisite period. For these reasons the AAO finds that the witness statements of [REDACTED] do not indicate that their assertions are probably true.

The applicant has submitted two employment verification letters from [REDACTED] the owner of [REDACTED] in San Pedro, stating that the applicant worked for him as a full-time presser from February 1986 through September 1987. The witness states that he no longer has any employment records or tax records regarding the applicant's employment. However, the applicant did not list any employment as a presser with [REDACTED] in the I-687 application. In addition, at the time of her interview, the applicant stated that she worked for [REDACTED] from June 1983 to June 1984. Due to these inconsistencies, the employment verification letters have minimal probative value.

² In addition, in a Form I-130, petition for alien relative, filed by [REDACTED] on behalf of the applicant, the witness states that the applicant came to the United States in December 1980. This is inconsistent with the testimony of the applicant in the I-687 application, in which the applicant states that she first came to the United States in February 1980.

³ The applicant states that she worked for [REDACTED] as a housekeeper for 10 years, from 1986 to 1996, although she does not provide a work location.

Further, the employment verification letters of [REDACTED] do not meet the requirements set forth in the regulations, which provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment. The regulation at 8 C.F.R. § 245a.2(d)(3)(i) provides that letters from employers must include: (A) Alien's address at the time of employment; (B) Exact period of employment; (C) Periods of layoff; (D) Duties with the company; (E) Whether or not the information was taken from official company records; and (F) Where records are located and whether the Service may have access to the records. If the records are unavailable, an affidavit-form letter stating that the alien's employment records are unavailable and why such records are unavailable may be accepted in lieu of subsections (E) and (F). The employment verification letters fail to comply with the above cited regulation because they lack considerable detail regarding the applicant's employment. For instance, the witness does not state the applicant's daily work duties, or how he was able to date the applicant's employment. It is unclear whether he referred to his own recollection or any records he may have maintained. For these additional reasons, these employment verification letters will be given no weight.

The applicant has submitted a copy of a student identification card from Harbor Occupational Center in San Pedro, California for 1981 to 1982. This document is some evidence of the applicant's presence in the United States for some part of 1981 and 1982.

The applicant has submitted copies of 11 photographs. The photographs are undated, and the persons and locations depicted in the photographs are not known. Therefore, these photographs will be given no weight.

The remaining evidence in the record is comprised of copies of the applicant's statements, the I-687 application, a Form I-130, petition for alien relative, filed by the applicant's sister [REDACTED] and a Form I-698, application to adjust status from temporary to permanent resident.⁴

In the I-687 application, the applicant listed residences in California as follows: from 1981 to 1982 in Van Nuys (although she did not provide a residence address); from 1982 to 1987 in San Pedro on 14th Street; and, from 1987 through the end of the requisite period in San Pedro on Barbour Court. She listed self-employment as a housekeeper from 1982 to 1986, and employment with [REDACTED] as a housekeeper from 1986 through the end of the requisite period. The applicant listed one absence from the United States, from December 1983 to January 1984.

At the time of her interview, the applicant amended the information in her I-687 application, listing residences as follows: from 1980 to 1982 in San Pedro on 14th Street; in 1982 in Van Nuys (although she did not provide a time period or a residence address); and, from 1982 to 1987 in San Pedro (although she did not provide a residence address). The applicant also listed an additional absence from the United States, from December 1986 to January 1987. Further, the applicant testified that she was employed in January 1983 at the Cannery, packing fish, and from June 1983 to June 1984 at [REDACTED]

The director of the Los Angeles office cited some of the aforementioned inconsistencies in a notice of intent to terminate (NOIT) the applicant's temporary residence. In rebuttal to the NOIT, counsel

⁴ The applicant's I-698 application has been terminated.

submitted an additional statement from the applicant, stating that she believes she moved to San Pedro in 1981, and worked for Acapulco Restaurant in 1981 as a cashier and waitress. Counsel also submitted additional documents and an additional witness statement, and asserted that the evidence submitted by the applicant establishes by a preponderance of the evidence that she continuously resided in the United States in an unlawful status for the duration of the requisite time period.

The AAO finds that the applicant has failed to provide probative and credible evidence of her continuous residence in the United States for the duration of the requisite period. The inconsistencies in the record regarding the date of the applicant's first entry into the United States, as well as inconsistencies regarding when the applicant was absent from the United States, as well as when she resided or worked at a particular location in the United States, are material to the applicant's claim in that they have a direct bearing on the applicant's residence in the United States during the requisite period. No evidence of record resolves these inconsistencies. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence pointing to where the truth lies. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *Matter of Ho*, 19 I & N Dec. 582, 591-592 (BIA). These contradictions undermine the credibility of the applicant's claim of entry into the United States prior to January 1, 1982 and 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. The various statements currently in the record which attempt to substantiate the applicant's residence and employment in the United States during the statutory period are not objective, independent evidence such that they might overcome the inconsistencies in the record regarding the applicant's claim that she maintained continuous residence in the United States throughout the statutory period, and thus are not probative.

Based on the foregoing, the AAO finds that the applicant has failed to resolve the inconsistencies in the record with independent objective evidence. Furthermore, 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. As the applicant has not overcome the basis for the termination of status, the appeal must be dismissed.

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