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Office of Administrative Appeals MS 2090
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FILE: [REDACTED] Office: LOS ANGELES

Date: **SEP 29 2010**

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Temporary Resident Status under 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.

A handwritten signature in black ink, appearing to read "Perry Rhew".

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 on both a lack of documentation and inconsistent documentation in the record of proceedings.

On appeal, the applicant asserts that the director's decision is erroneous because the evidence which he previously submitted establishes by a preponderance of the evidence that he continuously resided in the United States in an unlawful status for the duration of the requisite time period. The applicant has submitted additional witness statements on appeal.¹ The entire record was reviewed and considered in rendering this decision.²

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).

¹ The record reflects that the applicant's FOIA request, number [REDACTED] was processed on May 31, 2001.

² 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 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. 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 his eligibility for temporary resident status. As stated, the applicant must establish that he (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 of time. The documentation that the applicant submits in support of his 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 documents 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:

The statements 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.

Although the witnesses claim to have personal knowledge of the applicant's residence in the United States during the requisite period, the 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 do not indicate that their assertions are probably true.

The applicant has submitted employment verification letters from [REDACTED] of U.S. [REDACTED] [REDACTED] in Inglewood, California and [REDACTED] the owner of [REDACTED] [REDACTED]

[REDACTED] states that the applicant worked for [REDACTED] a distributor of the witness's company, from 1981 to 1986. However, the witness does not state where [REDACTED] was located, does not describe the applicant's job duties, and does not state whether the applicant was employed on a full time basis.

[REDACTED] states that the applicant worked for him from 1981 to 1986 as a door-to-door salesman of cooking utensils, although the witness does not state whether the applicant was employed on a full time basis. The testimony of the witness is inconsistent with the testimony of the applicant in the instant I-687 application, and in an initial I-687 application filed in 1993, in which the applicant does not list employment with [REDACTED] [REDACTED] during the requisite statutory period.

Further, the employment verification letter of [REDACTED] does 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 letter fails to comply with the above cited regulation because it lacks considerable detail regarding the applicant's employment. For instance, the witness does not state the applicant's daily work duties, the number of hours or days he was employed, or the location at which he was employed. Furthermore, the witness does not state 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 reasons, the employment verification letter is of little probative value.

The record contains a copy of a money order receipt dated November 25, 1981. This document is some evidence in support of the applicant's residence in the United States for some part of 1981.

The applicant has submitted a copy of a pharmacy receipt dated December 14, 1982. This document is some evidence in support of the applicant's residence in the United States for some part of 1982.

The record contains a copy of a receipt dated January 1983 for the purchase of uniforms. The record also contains a copy of a health insurance subscriber card with an effective date of July 14, 1983. These documents are some evidence in support of the applicant's residence in the United States for some part of 1983.

The applicant has submitted a copy of a receipt dated December 19, 1984. This document is some evidence in support of the applicant's residence in the United States for some part of 1984.

The record contains a copy of a postal receipt dated August 4, 1986. The record also contains copies of three stamped envelopes with postmarks dated August, October and November 1986, respectively. However, all of these documents list the applicant's address as [REDACTED] in Los Angeles. The applicant did not list this address as a residence during the requisite period in either of the two I-687 applications. Due to these inconsistencies, these documents will be given no weight.

The applicant has submitted a copy of a stamped envelope with a postmark date of May 13, 1987. The applicant has also submitted copies of two photo-identification cards dated February 1987 and September 1987, respectively. The record also contains copies of two certificates of completion, both dated December 5, 1987, and a copy of a W-2 form from [REDACTED] in Los Angeles. However, in the instant I-687 application, the applicant does not list [REDACTED] or [REDACTED] as an employer during the requisite period.³ Due to this inconsistency, this document will be given no weight. The remaining documents are some evidence in support of the applicant's residence in the United States for some part of 1987.

The record contains a copy of a course completion card dated February 19, 1988. This document is some evidence of the applicant's presence in the United States on February 19, 1988.

³ The applicant does list [REDACTED] as an employer in the initial I-687 application.

These documents are some evidence in support of the applicant's residence in the United States during some part of 1981, 1982, 1983, 1984, 1987 and 1988. However, while the documents listed above indicate that the applicant resided in the United States for some part of the requisite period, considered individually and together with other evidence of record, they do not establish the applicant's continuous residence for the duration of the requisite period.

The record contains a certified copy of the applicant's marriage certificate, which states that the applicant was married in Mexico on January 9, 1984.

The remaining evidence in the record is comprised of copies of the applicant's statements, the instant I-687 application, the initial I-687 application, filed in 1993 to establish the applicant's CSS class membership, a Form I-485, application to adjust to permanent resident status under the Legal Immigration Family Equity (LIFE) Act, and a Form I-698, application to adjust status from temporary to permanent resident.⁴ The record contains inconsistencies regarding the dates of the applicant's absences from the United States, the date of his marriage, the date of his son's birth, and the locations where he worked in the United States during the requisite period.

In the initial I-687 application, the applicant listed employment in Los Angeles at [REDACTED] from 1981 to 1986, at [REDACTED] in 1987, and at the [REDACTED] from 1987 through the end of the requisite statutory period. The applicant listed two absences from the United States during the requisite period, from May 10, 1987 to June 7, 1987 and in December 1983. The applicant listed one child, born in Mexico on November 21, 1981. In a class member worksheet, filed contemporaneously with the initial I-687 application and signed June 17, 1993, the applicant stated that he first entered the United States in June 1981.

In a Form G-325A, biographic information sheet, signed October 7, 2001 and filed contemporaneously with the I-485 application, the applicant listed his date of marriage as January 9, 1981.

In the instant I-687 application, the applicant listed employment in at [REDACTED] in Inglewood from 1981 to 1986, and at the [REDACTED] from 1985 through the end of the requisite statutory period. The applicant listed two absences from the United States during the requisite period, from May to June 1987, and from September to October 1983, respectively.

In a statement date June 1, 2005, the applicant stated that he was married in Mexico on [REDACTED].

At the time of his interview on July 14, 2009, the applicant stated that his only child was born on [REDACTED]. The applicant listed two absences from the United States during the requisite period. The applicant stated that he went to Mexico in December 1983 and returned to the United States after getting married in Mexico in January 1984, an absence of three weeks. The applicant also stated that he was absent from the United States from May 10 to June 7, 1987.

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

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, the applicant asserted that the evidence which he previously submitted establishes by a preponderance of the evidence that he continuously resided in the United States in an unlawful status for the duration of the requisite time period.

The applicant has failed to provide probative and credible evidence of his continuous residence in the United States for the duration of the requisite period. The inconsistencies regarding the dates of the applicant's absences from the United States, the date of his marriage in Mexico, the date his child's birth, as well as the dates when he 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 he 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 he maintained continuous residence in the United States throughout the statutory period, and thus are not probative.

The record reveals that on July 14, 2010, the applicant was charged with one count of violating section 11351 of the California Health and Safety Code (H&S), *Possession/Purchase for Sale Narcotic/Controlled Substance* (Riverside Sheriff's Office, case number [REDACTED]). Because the application will be denied on other grounds, the AAO will not request a court disposition for this arrest.

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 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. 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.