identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

L1

[redacted]

FILE: [redacted] Office: HOUSTON Date: APR 05 2011
MSC-06-090-12921

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 applicant's status as a temporary resident was terminated by the Director, Houston, Texas. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant was granted temporary resident status on November 14, 2006 under section 245A of the Immigration and Nationality Act (Act), as amended, 8 U.S.C. § 1255a. However, the regulation at 8 C.F.R. § 245a.2(b)(1) states in pertinent part, "the temporary resident status may be terminated [if] it is determined that the alien was ineligible for temporary residence under section 245A of this Act."

On July 27, 2010, the director issued a Notice of Intent to Terminate (NOIT) the applicant's temporary resident status. The NOIT indicated that the information regarding residence provided by the applicant was incomplete and inconsistent. The director provided the applicant with an opportunity to address insufficiencies in the evidence. The applicant failed to overcome the reasons stated in the NOID and, therefore, the director terminated the applicant's temporary residence on September 17, 2010. The applicant filed a timely appeal.

On appeal, the applicant indicates that United States Citizenship and Immigration Services (USCIS) erred in terminating his temporary resident status and that he has submitted sufficient evidence of his eligibility.

Section 245A(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255a(b)(2) states in pertinent part that the Act provides for termination of temporary residence status granted to an alien if it appears to the Attorney General [now Secretary, Department of Homeland Security] that the alien was in fact not eligible for such status, or the alien commits an act that makes the alien inadmissible to the United States as an immigrant, or the alien is convicted of any felony or three or more misdemeanors committed in the United States. *See also* 8 C.F.R. § 245a.4(b)(20)(i)(A).

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Following *de novo* review, the AAO finds that the applicant has failed to establish his continuous residence in the United States from January 1, 1982 through the end of the relevant 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 245(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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her 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).

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).

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.* at 80. 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, 431 (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 issue in this proceeding is whether the applicant has established 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.

In support of his eligibility, the applicant submits affidavits from [redacted] and [redacted] While the affiants indicate that they met the applicant during the relevant period, their statements do not include sufficient detailed information about the applicant's continuous residency in the United States since before January 1, 1982 and throughout the requisite period. They do not indicate how they date their initial acquaintance with the applicant, how frequently they saw the applicant during the relevant period, or where the applicant lived during the relevant period.

The record also contains an affidavit signed August 11, 1991. The affiant's name is not discernable. The affiant stated that the applicant was his tenant from January 26, 1981 until July 16, 1984. The complete address is unreadable, however, it is not consistent with the address listed on the applicant's current Form I-687.

The applicant has also submitted employment letters from the following employers: Tribble Stephen who indicates that the applicant was an employee from January 1980 until January 1982; Stewart Stevenson, who indicates that the applicant was an employee from November 1984 until March 1985, BB Company, who indicates that the applicant was employed "from 1985 to 1986," and, [redacted] who indicates that the applicant was employed from March 1985 until November 1987. The

letters contain numerous inconsistencies. For example, in an affidavit dated April 16, 1990, indicates that he employed the applicant from 1980 until 1982, however, on his Form I-687, the applicant indicates that he worked for the company until March 1985. On his amended Form I-687 filed on June 24, 1996, the applicant indicates that he worked for the company from January 1980 until 1984. Furthermore, indicates that the applicant worked for the company under the assumed name Jose Borrego from January 1980 until 1982. The declarant indicates that the company had no prior knowledge that the two names referred to the same individual until it was informed of this fact by the applicant in 1990. Because the record of proceedings reflects two different names, the applicant has the burden of proving that he was in fact the person who used each name. 8 C.F.R. § 245a.2(d)(2).

To meet the requirements of this regulation, documentation must be submitted to prove the common identity, i.e., that the assumed name(s) were in fact used by the applicant. The most persuasive evidence is "a document issued in the assumed name which identifies the applicant by photograph, fingerprint or detailed physical description. Other evidence which will be considered are affidavits(s) by a person or persons other than the applicant made under oath, which identify the affiant by name and address, state the affiant's relationship to the applicant and the basis of the affiant's knowledge of the applicant's use of the assumed name." 8 C.F.R. § 245a.2(d)(2). Since the affiant attesting to the applicant's use of the alias was not aware of the alias until 1990 and was told of the alias only by the applicant, the credibility and probative value of the evidence submitted in any name other than is substantially diminished.

As noted by the director, the record contains conflicting information regarding the applicant's initial entrance to the United States and his subsequent departures during the relevant period. The record contains a copy of the applicant's passport issued on April 10, 1986 in Mexico. As noted by the director, page 30 of the passport contains entry stamps into the United States from Brownsville, Texas on May 17, 1986, May 23, 1987, and September 3, 1988. Page 31 of the passport contains a Border Crossing Card issued on May 7, 1986 from the United States Consulate in Matamoros, Mexico. On the applicant's Form I-687, he lists absences from the United States in March 1985 and May 1987. These dates are inconsistent with the notations in his passport and cast doubt on the reliability of his testimony. The director indicated in the Notice of Intent to Terminate (NOIT) that the applicant's testimony regarding his absences was inconsistent. The applicant did not address this inconsistency on appeal. 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 unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92. The applicant has not provided independent objective evidence which resolves this inconsistency.

On March 26, 1985, the applicant was convicted in United States District Court, for the Southern District of Texas, under 8 USC 1325 for being smuggled into the United States on March 25, 1985. The applicant presented a fraudulent Form I-151 alien registration card, containing the name The applicant was sentenced to 120 days in jail with a suspended sentence and granted voluntary departure. The AAO finds that the applicant willfully misrepresenting a material fact to procure admission into the United States or other benefit provided under the Act (e.g., temporary resident status) which renders him inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i).

Section 245A(d)(2)(B)(i) of the Act, 8 U.S.C. § 1255a(d)(2)(B)(i), permits the Secretary of Homeland Security to waive certain grounds of inadmissibility, including inadmissibility under section 212(a)(6)(C)(i) of the Act, "in the case of individual aliens for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest." The record reveals that the applicant filed a Form I-690 waiver application which remains pending. However, the issue is moot because the applicant has not established his eligibility for the benefit sought.

The applicant has the burden of proving by a preponderance of the evidence that he has resided in the United States for the requisite period and that he is admissible to the United States. 8 C.F.R. § 245a.2(d)(5). To meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. 8 C.F.R. § 245a.2(d)(6). In this case, the applicant has not provided any evidence, apart from his own testimony, that resolves the inconsistencies in the record.

Therefore, based upon the foregoing, the applicant is ineligible for temporary residence because he 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*. Any temporary resident status previously granted to the applicant is terminated.

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