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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

FILE: [REDACTED] Office: HOUSTON
MSC-05-127-10928

Date: **APR 12 2011**

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:

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 July 5, 2005 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 January 13, 2009, 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 NOIT and, therefore, the director terminated the applicant's temporary residence on April 6, 2009. 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 the decision was arbitrary and capricious. Counsel for the applicant asserts that the Houston USCIS office routinely denies all applications for temporary resident status. The applicant requests a copy of the record of proceedings. This request was processed on August 3, 2010.¹

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 the following:

- Affidavits from [REDACTED] [REDACTED] The affidavits are offered as evidence of the applicant's absence from the United States from July 12, 1987 until August 15, 1987. The statements are not probative of the applicant's entrance to the United States prior to January 1, 1982 or his continuous residence throughout the relevant period.
- Written statements from [REDACTED] who indicate that the applicant was turned away from filing his amnesty application because he had traveled outside the United States in 1987.
- Written statement from [REDACTED] the applicant's uncle. [REDACTED] indicates that the applicant resided with him at [REDACTED]

York from 1981 until 1983 when the applicant moved to Houston, Texas. [REDACTED] indicates that her husband, [REDACTED] passed away in 1999, and she confirms his prior statements.

- Written statements from [REDACTED] who indicate that [REDACTED] was acquainted with the applicant since early 1986 and that the applicant traveled to Pakistan in July 1987. The statements do not indicate how [REDACTED] knew the applicant, how he dates his acquaintance with the applicant or where the applicant lived during the relevant period.
- Written statements from [REDACTED] While the declarants indicate that they knew the applicant during the relevant period, their statements lack sufficient detail to be considered credible. For example, the letters provide few details regarding the circumstances of the applicant's residence in the United States or of the claimed relationship of over 20 years. Furthermore, the declarants do not indicate how they date their acquaintance with the applicant.
- A letter from the Islamic Society of Greater Houston, signed by [REDACTED] The letter indicates that the applicant has been active in the Muslim community in Houston since 1984. The letter fails to indicate where the applicant resided during the period of his membership. It also fails to establish how the author knows the applicant; and fails to establish the origin of the information provided, contrary to regulatory requirements found at 8 C.F.R. § 245a.2(d)(3)(v). Given these failings and contradictions, the letter has little weight as evidence of the applicant's residence in the United States during the requisite period.
- A letter from [REDACTED] who indicates that the applicant rented an apartment from September 1983 until July 1985.
- A letter from [REDACTED], the applicant's wife. [REDACTED] indicates that she met the applicant in Houston while he was working for [REDACTED] She indicates that they lived together from January 1986 until December 1988.
- The applicant has submitted employment letters from the following employers:
 - Atlas Crushed Stone, who indicates that the applicant worked for the company from March 1984 until December 1985;
 - American Travel & Tours, signed by Mike Mohammad, who indicates that the applicant worked for the company from December 1986 until July 1988.
 - Sunrise Cleaners & Laundry, signed by Lee Tran, who indicates that the applicant was employed at their plant in Houston Texas from January 1986 until November 1986;

- Burki, Inc., signed by [REDACTED] who indicates that the applicant was employed in their dry cleaning plant from September 1983 until February 1984.
- P.I.A. Contracting, signed by [REDACTED] who indicates that the applicant was employed in the maintenance division from January 1982 until August 1983.
- Noor Auto Sales, who indicates that the applicant was employed by the company from August 1988 until September 1989.

The letters all contain very similar language and font. Additionally, they fail to meet certain regulatory standards set forth at 8 C.F.R. § 245a.2(d)(3)(i), which provides that letters from employers must include the applicant's address at the time of employment; exact period of employment; whether the information was taken from official company records and where records are located and whether USCIS may have access to the records; if records are unavailable, an affidavit form-letter stating that the employment records are unavailable may be accepted which shall be signed, attested to by the employer under penalty of perjury and shall state the employer's willingness to come forward and give testimony if requested. The statements noted do not include much of the required information and can be afforded minimal weight as evidence of the applicant's residence in the United States for the duration of the requisite period.

The record contains inconsistent information regarding the applicant's first entrance to the United States. On his current Form I-687, the applicant indicates that he first entered the United States in December 1981. However, during his interview with USCIS on October 8, 2002, the applicant indicates that he first entered the United States in January 1981. Also, during his interview on July 6, 1994, the applicant testified under oath that he first entered the United States on December 10, 1981. On his Form G-325A dated September 1997, he indicated that he resided in Pakistan from November 1979 until December 1981. However, on his Form G-325A dated January 2, 2002, the applicant indicated that he resided in Pakistan from July 1963 until August 1987. 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.

Furthermore, the AAO notes that a legalization applicant must show continuous physical presence in the United States from November 6, 1986 through May 4, 1988. Section 245A(a)(3)(A) of the Act, 8 U.S.C. § 1255a(a)(3)(A). An absence during this period which is found to be brief, casual and innocent shall not break a legalization applicant's continuous physical presence. Section 245A(a)(3)(B) of the Act, 8 U.S.C. § 1255a(a)(3)(B). See e.g. *Espinoza-Gutierrez v. Smith, INS, et al.*, 94 F.3d 1270 (9th Cir. 1996). The *Espinoza-Gutierrez* court held that a legalization applicant's absence would not represent a break in continuous physical presence if it was found that the absence was brief, casual and innocent as defined by the court in *Rosenburg v. Fleuti*, 374 U.S. 449 (1963) See also *Assa'ad v. U.S. Attorney General, INS*, 332 F.3d 1321 (11th Cir. 2003)(which affirmed the

portion of the holding in *Espinoza-Gutierrez* relied upon here, but disagreed with a different aspect of that holding).

The AAO notes that the applicant testified that he was absent from the United States from July 12, 1987 until August 15, 1987, for a total of 35 days. The AAO notes that because the applicant's asserted absence was less than 45 days, it did not meaningfully interrupt any continuous residence that he may have established. *See Rosenberg, supra* (where the court looked to (1) the duration of the alien's absence; (2) the purpose of the absence; and (3) the need for special documentation to make the trip abroad to determine whether the absence was brief, innocent and casual or meaningfully disruptive of the alien's residence in the United States).

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.