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



U.S. Citizenship
and Immigration
Services



L1

DATE: AUG 17 2011

Office: HOUSTON

FILE: [REDACTED]
MSC 05 208 11807

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.

Elizabeth McCormack

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The termination of temporary resident status by the Director, California Service Center is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant submitted a Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (Act). The Form I-687 was approved. Subsequently, the applicant filed Form I-698, Application to Adjust Status from Temporary to Permanent Resident. The director determined that the applicant did not establish by a preponderance of the evidence that he had entered and continuously resided in the United States in an unlawful status since prior to January 1, 1982, and for the duration of the requisite period and issued a Notice of Intent to Terminate (NOIT). The director terminated the applicant's temporary resident status, finding that the applicant had not met his burden of proof and that he was therefore not eligible to adjust from temporary resident status pursuant to Section 245A of the Act. The director subsequently denied the applicant's Form I-698 based upon the termination of his temporary resident status.

On appeal, the applicant submits his own affidavit to clarify the contradictions the director noted in the NOIT. The applicant also submits copies of previously submitted affidavits which he claims establish that he entered the United States prior to January 1, 1982 and had thereafter resided in a continuous unlawful status.

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).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), "until the date of filing" shall mean until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file during the original legalization application period of May 5, 1987 to May 4, 1988. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

The applicant shall be regarded as having resided continuously in the United States if, at the time of filing no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred eighty (180) days during the requisite period, unless the applicant can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed. 8 C.F.R. § 245a.2(h)(1)(i).

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 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 regulation at 8 C.F.R. § 245a.2(u)(1)(i) prescribes that the status of an alien lawfully admitted for temporary residence under section 245A(a)(1) of the Act may be terminated at any time if “[i]t is determined that the alien was ineligible for temporary residence under Section 245A of this Act[.]” The applicant bears the burden to 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 record in this case shows that the applicant was granted temporary resident status under section 245A(a)(1) of the Act. The director subsequently issued a NOIT, informing the applicant of his failure to establish eligibility for temporary residence. The director found that the applicant failed to provide sufficient evidence to establish that he entered the United States prior to January 1, 1982 and resided in a continuous unlawful status in the United States during the requisite period, and terminated the applicant’s temporary residence.

The documentation that the applicant submits in support of his claim to have arrived in the United States before January 1, 1982 and lived in an unlawful status during the requisite period consists of affidavits and other evidence. The AAO has reviewed each document in its entirety to determine the applicant's eligibility; however, the AAO will not quote each witness 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 director states in the NOIT that a secondary review of the file revealed that the applicant claimed on his current Form I-687 application that he first entered the United States in May 1974. The applicant claimed on his class membership determination form that he first entered the United States without inspection in November 1981. The applicant provided his own affidavit signed September 28, 2010 where he states that he first entered the United States in 1975. 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 petitioner submits competent objective evidence pointing to where the truth lies. No objective evidence of record resolves these inconsistencies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The applicant has not established he entered the United States prior to January 1, 1982.

On appeal, the applicant submits affidavits from persons who previously submitted an affidavit on the applicant’s behalf. [REDACTED] signed notarized statements to establish the applicant’s initial entry and residence in the United States during the requisite period. These affidavits are dated December 12, 2009. Mr. [REDACTED] states in his affidavit that he is the applicant’s brother and has known the applicant since birth but gives no other information about the applicant. Mr. [REDACTED] states in his affidavit that he met the applicant in March 1980 while they lived at the same property but he does not state the

address where they lived together. Mr. [REDACTED] also claims that he is still good friends with the applicant but does not give any other information about the applicant.

Mr. [REDACTED] states in his affidavit that he met the applicant in May 1980 while he was an employee at Ace Chinese restaurant and that they are still good friends. In the applicant's affidavit dated September 28, 2010, the applicant states that he did not work for [REDACTED] from November 1981 until October 1984; they were only friends. However, on both the applicant's Form I-687 applications signed on July 19, 1990 and the subsequent (current) Form I-687 signed on April 11, 2005, the applicant claims that he worked for Mr. [REDACTED] at [REDACTED] from November 1981 until October 1984 doing maintenance. The evidence of record also conflicts with the applicant's affidavit on appeal. Mr. [REDACTED] does not clear up this discrepancy in his affidavit. Finally, the affiants attest to the applicant's good moral character.

The record also contains affidavits from [REDACTED] Mr. [REDACTED] states in his affidavit that he met the applicant in May 1981 and that he used to live with the applicant's brother, [REDACTED] but he does not give the address nor the time period he lived with Mr. [REDACTED] Ms. [REDACTED] states that she met the applicant in June 1984 when he came to her home to visit [REDACTED] who lived with her. Ms. [REDACTED] neither gives her address nor when the applicant came to visit [REDACTED] states that he knows the applicant but does not give the date he met him.

While an applicant's failure to provide evidence other than affidavits shall not be the sole basis for finding that he failed to meet the continuous residency requirements, an application which is lacking in contemporaneous documents cannot be deemed approvable if considerable periods of claimed continuous residency rely entirely on affidavits which are considerably lacking in certain basic and necessary information. The affiants' statements are significantly lacking in detail and do not establish that the affiants actually had personal knowledge of the events and circumstances of the applicant's initial entry and residence in the United States. The affidavits do not provide much relevant information beyond acknowledging that they generally met the applicant in the 1980s. Overall, the affidavits provided are so deficient in detail that they can be given no significant probative value. None of them address the inconsistencies noted in the director's NOIT and Notice of Termination (NOT). The applicant has failed to provide probative and credible evidence of his entry and continuous residence in the United States during the requisite statutory period.

The record contains a letter signed by [REDACTED] Assistant Manager of Holly Creek Apartments in The Woodlands. The letter states that the applicant has been a resident of Holly Creek, and resided at [REDACTED] since October 1984 to present or February 22, 1990, the date the letter was signed. However, the applicant claims on his current Form I-687 application that he resided at [REDACTED] from 1981 to October 1985 and [REDACTED] from October 1985 to September 1997. Further, the applicant does not list on his initial and current Forms I-687 his address in May 1974, the earliest date he claimed to have entered the United States and does not list any places of residence from May 1974 to 1981. On his initial and current Form I-687 applications, the

applicant does not claim to have resided in the United States until November 1981. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. *See Matter of Ho, supra.*

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). The applicant has been given the opportunity to satisfy his burden of proof. The AAO finds that the applicant’s temporary resident status was properly terminated pursuant to section 245A(b)(2) of the Act and the corresponding regulation at 8 C.F.R. § 245a.2(u)(1)(iv). Thus, the appeal in this matter will be dismissed.

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