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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

[REDACTED]

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FILE:

[REDACTED]

Office: HOUSTON

Date:

FEB 07 2011

IN RE:

Applicant:

[REDACTED]

[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 December 28, 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 November 12, 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 March 8, 2010. The applicant filed a timely appeal.

On appeal, the applicant indicates that United States Citizenship and Immigration Services (USCIS) erred in terminating her temporary resident status and that the decision was arbitrary and capricious.

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 her 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 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 of time. In support of her eligibility, the applicant submits the following:

- Affidavits from [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 how they have direct personal knowledge of her continuous residency. The affidavits also contain numerous material inconsistencies. For example, [REDACTED] both indicate that the applicant moved from Canada to Houston in 1980. However, in her Form I-687 filed on August 12, 2004, the applicant indicates that she lived in Kalamazoo, Michigan from 1978 until 1980. [REDACTED] indicates that she met the applicant in 1981 in New York and that she has visited her at various occasions since 1981 in Houston. She does not indicate the frequency of their visits and therefore, her testimony has little probative value.
- Membership cards from the [REDACTED] dated 1980-1985.

- Copies of lease agreements dated 1980, 1981, 1984 and 1985 for [REDACTED] in Houston, Texas.
- Copies of several medical documents containing the name [REDACTED] dated in 1986. The health care providers noted on the documents are all located in Illinois. Furthermore, they indicate that the applicant's address at the time of service was in Glen Carbon, Illinois. This address is not listed on any of the documents filed by the applicant.

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.

The record also contains inconsistent information regarding the applicant's departures from the United States during the relevant period. On her current Form I-687, the applicant indicates that she departed the United States once during the relevant period, in December 1988. However, in her LIFE Act interview on November 12, 2003, the applicant indicated that she departed the United States in 1986 returning two weeks later. Furthermore, as noted by the director, USCIS records indicate that applicant entered the United States in nonimmigrant visitor status on October 31, 1989. The applicant has not addressed this inconsistency. Finally, the applicant filed a Form I-687 on March 21, 2002 in which she indicated that she resided in Houston, Texas from 1980 until 1986. However, on her Form I-687 filed in 2004, she lists an address in Kalamazoo, Michigan from 1978 until 1980. As noted above, several affiants indicate that she moved directly to Texas after entering the United States. The applicant has not addressed this inconsistency.

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

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

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