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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

L,

[REDACTED]

FILE:

[REDACTED]

Office: LOS ANGELES

Date:

FEB 07 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:

[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, Los Angeles. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined that the applicant failed to establish continuous residence since prior to January 1, 1982 and through the requisite period. Specifically, the director noted several inconsistencies in the applicant's testimony. The director also noted that the affidavits submitted lacked sufficient detail to be considered probative. On September 22, 2009, the director issued a Notice of Intent to Terminate (NOIT) and granted the applicant 30 days in which to submit evidence in rebuttal to the proposed termination of his temporary resident status. Based on the evidence submitted, the applicant failed to overcome the reasons stated in the NOIT. Therefore, the director determined that the applicant was not eligible for status as a temporary resident pursuant to Section 245A of the Act. The applicant filed a timely appeal.

On appeal, through counsel, the applicant indicates that the evidence submitted is not inconsistent and that the affidavits are credible. The applicant further asserts that the evidentiary standard applied by United States Citizenship and Immigration Services (USCIS) is improperly applied to a legalization application. The applicant requests a copy of the record of proceedings. This request was processed on July 20, 2010.<sup>1</sup>

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).

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).

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<sup>1</sup> NRC2010052254

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] his mother, [REDACTED] [REDACTED] indicates that her son accompanied her to the USCIS office in 1987 to file legalization paperwork. She also indicates that her son began going to school in 1989. Her testimony does not speak to the applicant's entry to the United States prior to January 1, 1982 or his continuous residence throughout the relevant period, with the exception of his visit to file legalization paperwork in 1982. [REDACTED] indicates that she met the applicant in December 1981 at a market in Miami. She does not indicate where the applicant lived during the relevant period or how often they saw each other. [REDACTED] [REDACTED] indicate that the applicant lived at [REDACTED] [REDACTED] throughout the relevant period, however, on his Form I-687 the applicant indicates that he resided at 6448 Tijuana Ave. #E in North Hollywood, California from November 1981 until 1988.

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. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the application. *Id.* at 591. The applicant has not addressed the inconsistencies between his testimony and that of his affiants' beyond indicating that the inconsistencies are not material to the application.

Furthermore, the documents 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. None of the witnesses supplies any details about the applicant's life and their interaction with each other, shared experiences, or the date and manner he entered the United States. The affiants fail to indicate any other details that would lend credence to their claimed acquaintance with the applicant and the applicant's residence in the United States during the requisite period.

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.

Beyond the decision of the director, on July 28, 1994, the applicant pled guilty to violating California Vehicular Code §10852, *Breaking or Removing Vehicle Parts*, a misdemeanor. The record does not contain a final court disposition indicating the resolution of this arrest. A single misdemeanor conviction does not render the applicant ineligible for temporary resident status.

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