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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**

[Redacted]

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DATE:

Office: HOUSTON, TEXAS

FILE:

[Redacted]

**APR 02 2012**

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 application for temporary resident status under Section 245A of the Immigration and Nationality Act (Act) was terminated by the Field Office Director (director), Houston, Texas. The decision to terminate is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined that the applicant had failed to establish by a preponderance of the evidence that she entered the United States before January 1, 1982 and had resided continuously in the United States in an unlawful status through the requisite period and terminated the applicant's temporary resident status.

On appeal, the applicant asserts that she entered the United States in 1981, that the affidavits previously submitted in the record are sufficient to establish her claim and that "there is simply no other evidence available to me after all this time, to submit to you to establish my physical presence in the United States during those early years." The AAO has considered the applicant's assertions, reviewed all of the evidence, and has made a *de novo* decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the evidence.<sup>1</sup>

The temporary resident status of an alien may be terminated upon the determination that the alien was ineligible for temporary residence. Section 245A(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1255a(b)(2)(A), and 8 C.F.R. § 245a.2(u)(i).

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 245A(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 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.

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<sup>1</sup> The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

§ 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 applicant, a native of Mexico who claims to have lived in the United States since May 1981, submitted a Form I-687, Application for Status as a Temporary Resident under section 245A of the Immigration and Nationality Act (Act), and Form I-687 Supplement, CSS/Newman Class Membership Worksheet on November 15, 2005. The application was approved on October 3, 2006. On September 20, 2011, the director terminated the applicant's temporary resident status.

In a Notice of Intent to Terminate (NOIT) dated February 25, 2011 the director indicated that the documentation submitted by the applicant, specifically, the affidavits from individuals who claim to have employed, or have known her in the United States during the 1980s were substantively deficient and not credible evidence of the applicant's continuous unlawful residence for the requisite period. He granted the applicant thirty (30) days to submit rebuttal evidence.

The applicant timely responded to the NOIT with her own affidavit, provided an explanation for the evidentiary deficiencies noted in the NOIT and submitted additional affidavits from witnesses. On September 20, 2011, the director issued a Notice of Termination (NOT) terminating the applicant's temporary resident status on the grounds that the information submitted in rebuttal was insufficient to overcome the grounds of termination of temporary resident status stated in the NOIT.

On appeal, the applicant asserts that she entered the United States in 1981, that the affidavits she had submitted are sufficient to establish her claim and that she does not have new evidence to establish her continuous residence in the United States during the requisite period.

The issue in this proceeding is whether the applicant has established her eligibility for temporary resident status. As stated, the applicant must establish that she (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status throughout the requisite period.

The evidence that the applicant submits in support of her claim that she entered the United States before January 1982 and continuously resided in the United States for the requisite period consists primarily of witness statements from individuals who claim to have employed, rented a room to or have known the applicant in the United States during the requisite period. The AAO has reviewed the evidence in its entirety to determine the applicant's eligibility; however, the AAO will not quote each 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.

There is no contemporary documentation from the 1980s that shows the applicant to have resided continuously in the United States during the requisite period for legalization. For someone claiming to have lived in the United States since May 1981, it is noteworthy that the applicant is unable to produce a solitary piece of primary evidence during the following seven years through May 4, 1988.

The applicant indicated on the Form I-687 that she was employed by [REDACTED] from 1981 through 1984. In support of this claim, the record contains an undated statement from [REDACTED] [REDACTED] vaguely stated that she employed the applicant from 1981 to help her clean some apartments that belong to her and to take care of her children. [REDACTED] statement does not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because it does not list the applicant's address during the alleged periods of employment, does not specify the duties and the responsibilities of the applicant, does not indicate whether the information about the applicant's employment was taken from company records, does not indicate where the records are kept and does not indicate whether the records are available for review. Although [REDACTED] claims that she paid the applicant \$125-\$150 per week, the record does not contain copies of W-2 earnings statements, pay stubs, or tax records or other documentation

demonstrating that the applicant was actually employed during any of the years claimed. [REDACTED] does not provide any documentary evidence to establish her identity and residence in the United States during the requisite period or during the period of the alleged employment. Accordingly, [REDACTED] statement has little probative value as evidence of the applicant's continuous residence in the United States during the requisite period.

As for the statements and affidavits in the record from witnesses who claim to have rented a room to or otherwise have known the applicant in the United States during the 1980s, they have minimalist of fill-in-the-blank formats with very few details from the witnesses. They provided very few details about the applicant's life in the United States and the nature and extent of their interactions with her over the years. The witnesses do not state how they date their initial meeting with the applicant or how they acquired knowledge that the applicant entered the United States in 1981. The statements and affidavits are not accompanied by any documentary evidence – such as photographs, letters, and the like – demonstrating the affiants' personal relationships with the applicant in the United States during the 1980s.

[REDACTED] who claims to be a citizen of the United States, states that he has known the applicant since May 1981 because he rented a room to her from May 1981 to 1983. [REDACTED] does not provide any documentation to establish his identity, citizenship and residence in the United States during the requisite period. Although [REDACTED] claims that he currently resides at the same apartment he shared with the applicant – 9423 E Ave O, he has submitted no single piece of evidence, such as rental receipts, utility bills, or other correspondence bearing that address to establish that he has resided at the said address since 1981. Neither [REDACTED] nor the applicant has submitted any correspondence addressed to the applicant bearing the Ave. O address during the period 1981 to 1983 to establish that the applicant did in fact reside at the address during the same period.

In view of these substantive deficiencies, the AAO finds that the statements and affidavits have little probative value. They are not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988.

Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that she is eligible for the benefit sought. The various statements currently in the record which attempt to substantiate the applicant's residence and employment in the United States during the statutory period are not credible and probative.

Based on the foregoing, the AAO finds that the applicant has 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*. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis. As the applicant has not overcome the basis for the termination of status, the appeal must be dismissed.



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