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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**



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DATE: **AUG 10 2012**

Office: HOUSTON

FILE:

IN RE: Applicant:

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

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. As noted by the director, the applicant submitted sufficient evidence of his continuous residence in the United States after 1984 and throughout the remaining portion of the relevant period. However, the applicant has not established that he entered the United States prior to January 1, 1982 and resided continuously in the United States from January 1, 1982 until 1984.

In support of his eligibility, the applicant submits the following evidence of his residence prior to 1982 and until 1984:

- Affidavits from [REDACTED] [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. For example, [REDACTED] indicates that he met the applicant in the Spring of 1983 while playing volleyball. He does not indicate how he dates his initial acquaintance with the applicant. Mr. [REDACTED] indicates that he met the applicant in 1981 when they were neighbors at [REDACTED]. He does not indicate how frequently they saw each other or how he dates his acquaintance with the applicant. Mr. [REDACTED] indicates only that he met the applicant in December 1982 at [REDACTED] Restaurant when they worked together. He does not provide any additional details regarding their relationship. Similarly,

Mr. [REDACTED] indicates that he met the applicant in 1980 while they worked together at [REDACTED] Restaurant in Houston, Texas.

The AAO also notes that the applicant has submitted on appeal, copies of several envelopes dated in 1980. The original documents have not been submitted. Even if found credible, the AAO notes that these envelopes establish only the applicant's presence in the United States in 1980, not residence for the period of time in question.

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 he is eligible for the benefit sought. While the applicant has established his continuous residency in the United States after 1984, the AAO agrees with the director that the affidavits submitted in support of the period prior to 1984 do not contain sufficient detail to be considered credible.

Therefore, based upon the foregoing, the applicant has 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*. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

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