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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



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DATE: **AUG 13 2012**

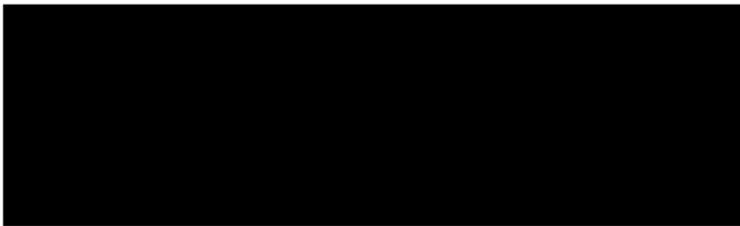
OFFICE: HOUSTON

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

DISCUSSION: The director of the Houston office terminated the temporary resident status of the applicant, finding the applicant failed to establish his eligibility for temporary resident status. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The AAO maintains plenary power to review this matter on a *de novo* basis. 5 U.S.C. § 557(b) (“On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.”); *see also, Janka v. U.S. Dept. of Transp.*, NTSB, 925 F.2d 1147, 1149 (9th Cir. 1991). The federal courts have long recognized the AAO’s *de novo* review authority. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). The AAO considers all pertinent evidence in the record, including new evidence properly submitted on appeal.

On September 8, 2005, the applicant submitted a Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (Act). On October 3, 2006, the application was approved. On March 13, 2012, the director terminated the applicant’s temporary resident status pursuant to 8 C.F.R. § 245a.2(u), finding the applicant failed to establish by a preponderance of the evidence that he entered the United States prior to January 1, 1982 and resided in a continuous unlawful status until he filed for legalization.

On appeal, counsel, on behalf of the applicant, asserts that submitted evidence is “credible and verifiable and constitutes sufficient proof of continuous residency during the statutory time-frame by the preponderance of the evidence.” The AAO will consider the applicant’s claim *de novo*, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.2(d)(6).¹

The regulations at 8 C.F.R. § 245a.2(u) states:

The temporary resident status may be terminated upon the occurrence of any of the following:

- (i) It is determined that the alien was ineligible for temporary residence under section 245A of this Act;
- (ii) The alien commits an act which renders him or her inadmissible as an immigrant, unless a waiver is secured pursuant to § 245a.2(k)(2).
- (iii) The alien is convicted of any felony, or three or more misdemeanors;
- (iv) The alien fails to file for adjustment of status from temporary resident to permanent resident on Form I-698 within forty-three (43) months of the date he/she was granted status as a temporary resident under § 245a.1 of this part.

¹ 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).

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).

For purposes of establishing residence and physical presence under the CSS/Newman Settlement Agreements, the term "until the date of filing" in 8 C.F.R. § 245a.2(b) means 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 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 issue in this proceeding is whether the applicant established 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. The evidence submitted in support of the applicant's claim to have arrived in the United States before January 1982 and to have resided in an unlawful status during the requisite period consists of an employment affidavit and affidavits from seven individuals claiming to know the applicant during the requisite period. The AAO has reviewed each document to determine the applicant's eligibility.

The employment affidavit from [REDACTED] states that the applicant worked for his company from April 1981 to 1991 as a laborer and the applicant resided at [REDACTED]. The affidavit does not conform to regulatory standards for letters from employers as stated in the regulation at 8 C.F.R. § 245a.2(d)(3)(i). The affidavit fails to show periods of layoff, state the applicant's specific duties, declare whether the information was taken from company records, and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable. In addition, in the applicant's Form I-687, he stated that he resided at apartment #D26 from 1982 to 2001. Given the lack of details and discrepancy, the affidavit provides minimal probative value and carries little weight as evidence in support of the applicant's claim.

The affidavits from [REDACTED] (relative), [REDACTED] (cousin), [REDACTED] are general in nature and state that they have known the applicant in the United States for all, or a portion, of the requisite period. The affiants fail to provide concrete information, specific to the applicant and generated by the asserted associations with him, which would reflect and corroborate the extent of those associations and demonstrate that the affiants have a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the statement. For example, [REDACTED] states he knows the applicant has maintained a residence at a specific address since February 20, 1981, but he fails to state how he recalls the date they began their relationship. Similarly, [REDACTED] states he met the applicant at a park at the applicant's apartment

complex but fails to state how frequently they had contact. Lacking concrete details, the affidavits provide minimal probative value as evidence in support of the applicant's claim.

To be considered probative and credible, witness affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Upon review, the AAO finds that the witness statements do not indicate that their assertions are probably true.

The record contains two Form I-687s, signed by the applicant in 1991 and 2005. The Form I-687s contain inconsistencies regarding the applicant's absence from the United States and his addresses of residence. In the first Form I-687 (1991), the applicant failed to list any absences from the United States; whereas, in the second Form I-687 (2005), he listed an absence to Mexico from March 1988 to June 1988. Furthermore, in the first Form I-687, the applicant stated that he resided at [REDACTED], from 1981 to the present (1991). In the second Form I-687, the applicant stated that he resided at [REDACTED] from 1981 to 1982 and at [REDACTED] from 1982 to 2001. In an attempt to reconcile these inconsistencies, the applicant submitted his own affidavit claiming preparer error with the first Form I-687 (1991). He asserts that he resided at [REDACTED] during the requisite period and not at [REDACTED]. The applicant also submitted three additional affidavits with his response. None of the affidavits mention the applicant's address of residence during the requisite period. Only one affidavit mentions the applicant's absence in 1988, but the affiant indicates only second-hand knowledge of the absence as communicated to him by the applicant.

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. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The AAO finds that the applicant has failed to reconcile the discrepancies with independent, objective evidence. Given this, the record contains inconsistencies which seriously detract from the credibility of his claim.

Based on the totality of the evidence, the record is insufficient to establish the applicant's claim of continuous residence during the requisite period. 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. Accordingly, the AAO affirms the director's decision to terminate the applicant's temporary resident status, finding that the applicant is ineligible for adjustment from temporary to permanent resident status under section 245A of the Act.

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