

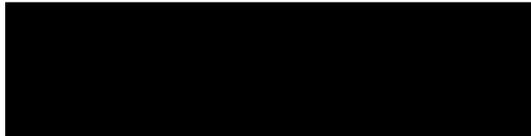
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W. MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



L1

Date: FEB 07 2012

Office: LOS ANGELES

FILE:



IN RE:

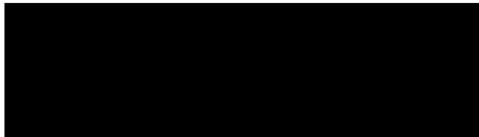
Applicant:



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.

A handwritten signature in ink, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (Act), was denied by the director of the Los Angeles office. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The director denied the I-687 application, finding that the applicant was ineligible for adjustment to temporary resident status because the applicant had not established by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status for the duration of the requisite period.

On appeal, counsel asserts that the evidence which the applicant previously submitted establishes by a preponderance of the evidence that he continuously resided in the United States in an unlawful status for the duration of the requisite period. On appeal, the applicant has submitted witness statements from [REDACTED] (the applicant's mother), [REDACTED] (the applicant's sister) and [REDACTED]. Counsel has also submitted an additional statement from the applicant, and additional witness statements from Father [REDACTED] and [REDACTED]. The AAO has 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.¹

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. § 245a.2(d)(3)(vi)(L). To meet his or her burden of proof, an applicant must provide evidence of

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).

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 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 throughout the requisite period. The documentation that the applicant submits in support of his claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists of witness statements and documents. The AAO has reviewed the documents in their entirety to determine the applicant's eligibility; however, the AAO will not quote the witness statements 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 period, it shall not be discussed.

On January 10, 2006, the applicant filed the instant I-687 application. In support of his application the applicant submitted witness statements and documents. The witness statements

from [REDACTED] state their knowledge of the applicant's residence in the United States for all, or a portion of, the requisite period.² In addition, the applicant submitted two letters from [REDACTED] in Los Angeles, who states that the applicant has been a member of his parish, attending services regularly, since 1981.³ These witness statements, considered individually and together with other evidence of record, provide concrete information, specific to the applicant, and demonstrate a sufficient basis for reliable knowledge about the applicant's residence in the United States during the requisite period.

In addition, the applicant submitted an employment verification letter from [REDACTED] stating that the applicant worked for him for a portion of the requisite period, a copy of a 1988 Form W-2 issued to the applicant by [REDACTED] in North Hollywood, and a copy of the first page of a 1988 Federal income tax return.⁴ These documents, considered individually and together with other evidence of record, establish the applicant's continuous residence for the duration of the requisite period.

The contemporaneous documents submitted by the applicant appear to be credible. The witness statements submitted by the applicant appear to be credible and amenable to verification in that they include contact telephone numbers and/or contact addresses.

The applicant gave testimony that was consistent with the information in the record when he testified that he entered the United States with his father in June 30, 1981, worked in the United States as a carpet installer for a portion of the requisite period, and continued to reside in the United States for the duration of the requisite statutory period.

The director has not established that the information in the many supporting documents in the record was inconsistent with the applicant's testimony or with the claims made on his I-687 application. In addition, the director has not established that any material inconsistencies exist *within* the claims made in the supporting documents, or that the documents contain false information. As stated in *Matter of E-M-*, 20 I&N Dec. at 80, when something is to be established by a preponderance of the evidence, the proof submitted by the applicant has to establish only that the asserted claim is probably true. That decision also states that, under the preponderance of evidence standard, an application may be granted even though some doubt

² Witnesses [REDACTED] (the applicant's mother) and [REDACTED] (the applicant's sister) were living in Mexico during the requisite period and, therefore, did not have first-hand knowledge of the applicant's continuous residence in the United States during the requisite period. For this reason, the witness statements of [REDACTED] and [REDACTED] have minimal probative value.

³ Although the applicant failed to list his membership in [REDACTED] in the instant I-687 application, and in the initial I-687 application filed in 1990, the AAO finds the statements of Father [REDACTED] are entitled to some probative value.

⁴ Although the applicant failed to list his employment with [REDACTED] in North Hollywood in the instant I-687 application, and in the initial I-687 application filed in 1990, the AAO finds the W-2 Form is entitled to some probative value.

remains regarding the evidence. *Id.* at 79. The documents that have been furnished in this case may be accorded substantial evidentiary weight and are sufficient to meet the applicant's burden of proof of residence in the United States for the requisite period.

Therefore, the appeal will be sustained. The matter will be remanded for the director to complete the adjudication of the application for temporary resident status.

ORDER: The appeal is sustained.