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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]

L1

Date: FEB 14 2012

Office: HOUSTON

FILE: [REDACTED]

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 director of the Houston office terminated the temporary resident status of the applicant, finding the applicant to be ineligible for temporary resident status based on a lack of documentation and inconsistent documentation in the record of proceedings establishing his identity. The appeal will be sustained.

On appeal, counsel for the applicant asserts that the evidence which the applicant previously submitted establishes his identity, and asserts that the director was in error in terminating the applicant's temporary resident status on this basis. On appeal counsel has submitted copies of affidavits from the applicant and his family members attesting to the applicant's identity, which documents have previously been submitted into the record. On appeal, counsel has also submitted additional documentation in support of the applicant's explanation of inconsistencies in the record regarding his identity. The AAO has considered counsel'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. § 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

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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).

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 regulation at 8 C.F.R. § 245a.2 provides:

d) Documentation. Evidence to support an alien's eligibility for the legalization program shall include documents establishing proof of identity, proof of residence, and proof of financial responsibility, as well as photographs, a completed fingerprint card (Form FD - 258), and a completed medical report of examination (Form I - 693). All documentation submitted will be subject to Service verification. Applications submitted with unverifiable documentation may be denied. Failure by an applicant to authorize release to INS of information protected by the Privacy Act and/or related laws in order for INS to adjudicate a claim may result in denial of the benefit sought. Acceptable supporting documents for these three categories are discussed below.

(1) Proof of identity. Evidence to establish identity is listed below in descending order of preference:

- (i) Passport;
- (ii) Birth certificate;
- (iii) Any national identity document from the alien's country of origin bearing photo and fingerprint (e.g., a "cedula" or "cartilla");
- (iv) Driver's license or similar document issued by a state if it contains a photo;
- (v) Baptismal Record/Marriage Certificate; or
- (vi) Affidavits.

The issue in this proceeding is whether the applicant has established his identity by a preponderance of the evidence. To establish his identity, the applicant has submitted the following evidence:<sup>2</sup>

- A copy of the applicant's Iranian passport number [REDACTED], listing the applicant's name as [REDACTED], and his date of birth as September 23, 1948 in Tehran;
- A copy of the applicant's Iranian birth certificate, with certified translation, listing the applicant's name as [REDACTED] and his date of birth as July 15, 1948 in Tehran;
- A copy of the applicant's Texas driver's license, bearing an expiration date of June 18, 2003, listing the applicant's name as [REDACTED], and his date of birth as June 18, 1948; and,
- An affidavit from Fatemeh Ilkhan, the applicant's mother, stating that the applicant, [REDACTED], was born in Tehran on July 15, 1948.<sup>3</sup>

In addition, the director noted that the applicant listed his name and date of birth as follows: in the I-687 application filed in 1987, as [REDACTED] born in Tehran on July 16, 1948; in a Form I-698, application to adjust from temporary to permanent resident status, as [REDACTED] born in Tehran on July 16, 1948; and, in a Form I-485, application to adjust to permanent resident status under the Legal Immigration Family Equity (LIFE) Act, as Hamid Ilkhan born in Tehran on July 15, 1948. The director also noted in his decision that the applicant testified during his interviews that his date of birth is July 15, 1948.

<sup>2</sup> The director also refers to other types of documentation submitted by the applicant, listing the applicant's name as [REDACTED] or [REDACTED] and his year of birth as 1948, with the exception of a Form I-94, arrival/departure record, listing his date of birth as 1947. However, since the regulation at 8 C.F.R. § 245a.2(d) does not give these types of documents preference in establishing identity the AAO will not discuss them further.

<sup>3</sup> The applicant has also submitted affidavits from several other family members, stating their belief as to his date of birth. However, since these family members were born after the applicant they do not have first-hand knowledge of his date of birth.

On appeal, counsel submits a copy of applicant's affidavit explaining the inconsistencies in the record regarding his identity. Counsel also submits documents regarding common variations in the translation of Persian names. Counsel asserts that the applicant's name, [REDACTED], can also be translated as [REDACTED]. Counsel has submitted an article regarding the history of the [REDACTED] [REDACTED] using the names [REDACTED] interchangeably. The AAO finds this explanation of the inconsistency in the spelling of the applicant's name to be reasonable, and does not find this one letter variation in the applicant's name to be significant.

Similarly, while the AAO notes the discrepancies in the applicant's dates of birth, it does not find that the discrepancies affect the applicant's eligibility for temporary resident status. Although the applicant's passport, birth certificate, and Texas driver's license indicate different dates, they, nevertheless, place the applicant's birth in 1948 in Tehran, as does the applicant's testimony in the I-687, the I-698 and the I-485 applications. Whether the applicant was born in June, July or September 1948 would not be material to the applicant's claim, since that fact would not render him ineligible for temporary resident status, and would, therefore, be immaterial.<sup>4</sup> The AAO further finds that the passport, birth certificate, and Texas driver's license, together with the affidavit of the applicant's mother and the applicant's testimony, establish the applicant's identity, by a preponderance of the evidence, to be Hamid Ilkhan, born on July 15, 1948 in Tehran, Iran.

The applicant has resolved, with independent objective evidence, the inconsistencies in the record that formed the basis of the termination of the applicant's temporary resident status. Consequently, the applicant has overcome the basis for the termination of his temporary resident status.

Therefore, the appeal must be sustained. The matter will be returned for the director to reopen the application for adjustment from temporary to permanent resident status.

**ORDER:** The appeal is sustained.

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<sup>4</sup> For this reason, the AAO need not consider the additional articles submitted by counsel on appeal, with regard to converting Persian dates into Gregorian dates.