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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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U.S. Citizenship
and Immigration
Services

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Date: JAN 3 - 2012

Office: CALIFORNIA SERVICE CENTER

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 application for temporary resident status, filed during the original filing period, was denied by the director of the California Service Center. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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. More specifically, the director denied the I-687 application, based upon the applicant's testimony at the time of an interview on June 7, 1988, that he first entered the United States in August 1984.

On appeal, the applicant asserts that he first entered the United States in November 1981, that he was absent from the United States from July to August 1984, and that at the time of his interview he misunderstood the question pertaining to the date of his first entry into the United States. 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).

An alien who has been convicted of three or more misdemeanors in the United States is ineligible for temporary resident status. 8 C.F.R. § 245a.2(c)(1).

"Misdemeanor" means a crime committed in the United States, either (1) punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if

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).

any, or (2) a crime treated as a misdemeanor under 8 C.F.R. § 245a.1(p). For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor. 8 C.F.R. § 245a.1(o). There is no waiver available to an alien convicted of three or more misdemeanors committed in the United States.

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 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 time period, it shall not be discussed.

The applicant has submitted, as proof of his entry into the United States and continuous residence in the United States during the requisite period, witness statements from [REDACTED] (applicant's father), [REDACTED]. The witness statements are general in nature, and states that the witnesses have knowledge of the applicant's continuous residence in the United States for all, or a portion of, the requisite statutory period.

Although the witnesses claim to have personal knowledge of the applicant's residence in the United States during the requisite period, the witness statements do not 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 they were a sufficient basis for reliable knowledge about the applicant's residence in the United States during the requisite period. To be considered probative and credible, witness statements must do more than simply state that a witness knows an applicant and that the applicant has lived in the United States for a specific period. Their content must include sufficient detail from a claimed relationship to indicate that it probably did exist and that the witness, by virtue of that relationship, does have knowledge of the facts alleged. For instance, the witnesses do not state how they date their initial meeting with the applicant in the United States, or specify social gatherings, other special occasions or social events when they saw and communicated with the applicant during the requisite period. The witnesses also do not state how frequently they had contact with the applicant during the requisite period, or, with the exception of the applicant's father, list a specific address where the applicant resided during that period. The witnesses do not provide sufficient details that would lend credence to their claimed knowledge of the applicant's residence in the United States during the requisite period. For these reasons the AAO finds that the witness statements do not indicate that their assertions are probably true.

In addition, [REDACTED] was 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. Further, [REDACTED] states that the applicant has been her neighbor in the United States since June 1981. However, the testimony of the witness is inconsistent with the testimony of the applicant in a Form I-694, notice of appeal, signed by the applicant on August 6, 1992, that he first entered the United States in November 1981. For these reasons, the testimony of these witnesses has minimal probative value.

The applicant has submitted employment verification letters from an unidentified representative of [REDACTED]

The representative of [REDACTED] states that the

applicant worked for the company from April 23, 1987 through the end of the requisite period as a counterperson. [REDACTED] states that the applicant worked for [REDACTED] [REDACTED] although she does not describe the applicant's job duties. However, the applicant failed to list his employment with [REDACTED] in an I-687 application filed in 2005. In addition, although the applicant did list [REDACTED] in the instant I-687 application filed in 1988, he stated that he began working for the company in July 1985.

In addition, the employment verification letters from [REDACTED] [REDACTED] do not meet the requirements set forth in the regulations, which provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment. The regulation at 8 C.F.R. § 245a.2(d)(3)(i) provides that letters from employers must include: (A) Alien's address at the time of employment; (B) Exact period of employment; (C) Periods of layoff; (D) Duties with the company; (E) Whether or not the information was taken from official company records; and (F) Where records are located and whether the Service may have access to the records. If the records are unavailable, an affidavit-form letter stating that the alien's employment records are unavailable and why such records are unavailable may be accepted in lieu of subsections (E) and (F). The employment verification letters fail to comply with the above cited regulation because they lack considerable detail regarding the applicant's employment. For instance, the witnesses do not state the applicant's daily duties, the number of hours or days he was employed, or his address at the time of employment. Furthermore, [REDACTED] does not state how she was able to date the applicant's employment. It is unclear whether she referred to her own recollection or any records she may have maintained. Lacking relevant information, the letters regarding the applicant's employment fail to provide sufficient detail to verify the applicant's claim of continuous residence in the United States for the duration of the requisite statutory period. For these reasons, the employment verification letters are of little probative value.

The record contains a copy of a California identification card, issued to the applicant on June 27, 1986. The record also contains a copy of a 1986 Form W-2 issued to him, under the name of [REDACTED]. These documents are some evidence in support of the applicant's residence in the United States for some part of 1986.

The applicant has submitted two copies of a 1987 Form W-2 issued to him by [REDACTED] [REDACTED] and copies of 1987 Federal and California state income tax returns. These tax documents list the applicant's name as [REDACTED]. The applicant has also submitted a copy of a statement of earnings from the Social Security Administration, under the name of [REDACTED] [REDACTED] showing earnings for him for the year 1987 and 1988. The Form W-2 and the statement of earnings are some evidence in support of his residence in the United States for some part of 1987 and 1988. However, the AAO notes that the income tax forms list the applicant's spouse's name as [REDACTED] and lists four dependent children, named [REDACTED]. This is inconsistent with the information the applicant provided in a Form I-485, application to adjust to permanent resident status under the Legal Immigration Family Equity (LIFE) Act, filed by him in 2002, in which he lists his spouse's name as [REDACTED].

his children's names as [REDACTED]. Further, in a Form G-325A signed by the applicant on November 18, 2002 and filed with the I-485 application, he states that he married [REDACTED] on February 9, 1996, and that he has no former wives.² Due to these inconsistencies, the income documents have minimal probative value.

The remaining evidence in the record is comprised of copies of the applicant's statements, the instant I-687 application, the I-687 application filed in 2005, and a Form I-485, application to adjust to permanent resident status under the Legal Immigration Family Equity (LIFE) Act, filed in 2002. The AAO finds in its *de novo* review that the record of proceedings contains materially inconsistent statements from the applicant regarding the date of his initial entry into the United States, and the dates he resided and worked at particular locations in the United States.

At the time of completing the I-687 application filed in 2005, the applicant listed a residence on South Riatt in Santa Ana, California from 1981 through the end of the requisite period. He listed employment as a counterperson from 1987 to 1988 at [REDACTED] on North Harbor in Anaheim. He listed one absence from the United States during the requisite period, in 1984.

At the time of completing the instant I-687 application filed in 1988, the applicant listed a residence [REDACTED] from August 1984 through the end of the requisite period. He listed employment as a janitor with [REDACTED] from July 1985 to December 1986, and as a counterperson with [REDACTED] from April 23, 1987 through the end of the requisite period. He did not list any absences from the United States during the requisite period. At the time of his interview on June 7, 1988, the applicant amended the initial I-687 application multiple times to note that his first and only entry into the United States was in August 1984.

In a Form I-694, notice of appeal, signed by the applicant on August 6, 1992, the applicant stated that he first entered the United States in November 1981.

At the time of completing the I-485 application in 2002, the applicant stated that he last arrived in the United States in August 1980.

At the time of his interview on October 18, 2005, he signed a sworn statement that he first entered the United States in July 1982.

In a statement filed with a Form I-694, notice of appeal, dated November 19, 2010, the applicant stated that he first entered the United States in June 1981. He stated that any inconsistencies in the record are due to the fact that he became confused and nervous at the interviews, and because the interviews were conducted in English. However, the record does not reflect that the applicant requested an interpreter or communicated any difficulty in understanding or answering questions at the time of his interview. In addition, as noted above, the inconsistencies in the

² The AAO notes that in a Form G-325A signed by the applicant on April 10, 2001, he lists his marriage date as February 15, 1996.

applicant's testimony are not only at the time of the interviews, but between and among the instant I-687 application, the I-687 application filed in 2005 and the I-485 application, each of which the applicant signed, certifying that the information contained therein is true and correct.

The inconsistencies in the record regarding the date of the applicant's initial entry into the United States, and the dates he resided and worked at particular locations in the United States during the requisite statutory period are material to his claim, in that they have a direct bearing on his residence in the United States for the duration of the requisite period. As stated above, doubt cast on any aspect of an 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, supra.* These contradictions undermine the credibility of the applicant's claim of entry into the United States prior to January 1, 1982 and continuous residence in the United States during the requisite period.

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. 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 objective, independent evidence such that they might overcome the inconsistencies in the record regarding the applicant's claim that he maintained continuous residence in the United States throughout the statutory period, and thus are not probative.

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.

An additional issue is whether the applicant has met his burden of establishing that he is otherwise admissible to the United States, and that he does not have multiple criminal convictions that render him ineligible to adjust to temporary resident status. The record reveals the following criminal history:

- On March 7, 1992, the applicant was arrested and charged with a violation of section 25662 of the California Business & Professions Code (BP), *possession of alcohol by a minor*, and a violation of the California vehicle code (VC), section 13202.5, *suspension, delay, or restriction of driving privileges for possession of alcohol by a minor*. The record does not reveal a final court disposition for this arrest. (Superior Court of California, County of Orange, case [REDACTED])
- On December 19, 1992, the applicant was arrested and charged with violations of the California Vehicle Code (VC), as follows: section 23152(a), *driving under the influence of alcohol or drugs*; section 23152(b), *driving with blood alcohol content .08 or higher*; section 14601.1(a), *driving when privilege suspended or revoked*; and, 23222(a), *possession of open container while driving*. The record does not reveal a final court

disposition for this arrest. (Superior Court of California, County of Orange, case [REDACTED])

Further, at the time of his interview on the I-485 application, the applicant amended the I-485 application at Part 3, number 1, to reflect that he was also arrested in 1991 in Santa Ana for DUI.

First, declarations by an applicant regarding his criminal record are subject to verification of facts by United States Citizenship and Immigration Services (USCIS). An applicant must agree to fully cooperate in the verification process. Failure to assist USCIS in verifying information necessary for the adjudication of the application may result in a denial of the application. 8 C.F.R. § 245a.2(k)(5). As stated above, it is not clear from the record whether the applicant's 1991 and 1992 arrests resulted in convictions. The record reflects that the applicant has submitted a "No Record" statement dated October 11, 2005, from the Superior Court of California, County of Orange regarding the 1992 offenses, and nothing regarding any 1991 offense. However, regarding the 1992 offenses, the applicant did not, as advised in the "No Record" statement, contact the California Department of Justice, Bureau of Criminal Identification in Sacramento for further information. The applicant has failed to submit a final court disposition for the 1991 and 1992 charges or evidence that the offenses for which he was arrested did not result in a conviction. The applicant's declaration, at the time he completed the I-687 application filed in 2005 and the I-485 application, that he has a criminal record, is subject to verification by USCIS. He must agree to fully cooperate in the verification process. Failure to assist USCIS in verifying the information necessary for the adjudication of the application may result in a denial of the application. 8 C.F.R. § 245a.2(k)(5). For this reason alone, the application cannot be approved.

Second, as stated above, an alien who has been convicted of three or more misdemeanors in the United States is ineligible for temporary resident status. 8 C.F.R. § 210.3(d)(3). The applicant has failed to establish that he is not inadmissible to the United States on the basis of multiple misdemeanor convictions. As stated above, there is no waiver available to an alien convicted of three or more misdemeanors committed in the United States.

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, continuously resided in an unlawful status in the United States for the requisite period, and is otherwise eligible for adjustment of status, as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M--*, *supra*. In addition, the applicant has failed to establish that he is not inadmissible on the basis of multiple criminal convictions. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on these bases. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternative basis for the dismissal.

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