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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: Office: TEXAS SERVICE CENTER

FILE:



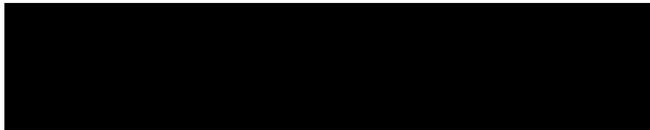
**JAN 25 2012**

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 applicant's status as a temporary resident was terminated by the Director, Texas Service Center. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reveals the following procedural history. On May 4, 1988 the applicant properly filed a Form I-687 Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (Act). The application was denied on July 26, 1991 because the applicant failed to appear for multiple scheduled interviews with United States Citizenship and Immigration Services (USCIS), formerly Immigration and Naturalization Service (INS). The application was subsequently reopened on Service motion and approved on January 14, 2006. However, a subsequent review of the application revealed multiple inconsistencies in the record which were outlined in a Notice of Intent to Terminate (NOIT) issued to the applicant on August 31, 2010. The applicant was provided with an opportunity to address the inconsistencies in the record and submit additional evidence of her eligibility. Based on the evidence submitted, the applicant failed to overcome the reasons stated in the NOIT. Therefore, the director determined that the applicant was not eligible for status as a temporary resident pursuant to Section 245A of the Act. The applicant filed a timely appeal.<sup>1</sup>

Section 245A(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255a(b)(2) states in pertinent part that the Act provides for termination of temporary residence status granted to an alien if it appears to the Attorney General [now Secretary, Department of Homeland Security] that the alien was in fact not eligible for such status, or the alien commits an act that makes the alien inadmissible to the United States as an immigrant, or the alien is convicted of any felony or three or more misdemeanors committed in the United States. *See also* 8 C.F.R. § 245a.4(b)(20)(i)(A).

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 245(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 period, 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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her 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).

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

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<sup>1</sup> The AAO notes that the applicant's Form I-698 Application to Adjust Status from Temporary to Permanent Resident was approved on June 24, 2010.

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 she (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. The record contains three affidavits in support of the applicant's continuous residence throughout the relevant period. The applicant also submitted documentation of her residence in the United States after the relevant period which will not be considered.

In the first written statement, dated October 21, 2005, [REDACTED] indicates that the applicant lived with her at [REDACTED] from October 1987 through May 1993. She indicates that she has known the applicant for 18 years, however, she does not indicate how they met, or provide any further details of their relationship.

[REDACTED] indicates that the applicant lived with her at [REDACTED] from February 13, 1981 until September 31, 1983. She also fails to provide any additional details of her relationship with the applicant.

[REDACTED] indicates that the applicant lived at his residence at [REDACTED] from 1984 until October 1987. This statement is inconsistent with the information provided by the applicant on her Form I-687 and her revised Form I-687 submitted in response to a Request for Evidence (RFE). On her initial Form I-687 the applicant lists one residence, at [REDACTED] however, she does not indicate the dates of her residence at that address. On her revised Form I-687, she indicates that she lived at [REDACTED] from January 1980 until February 1981.

It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*,

19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the application. *Id.* at 591. This material inconsistency casts doubt on the reliability of the witness statement.

Upon review, the documents 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. None of the witnesses supplies any details about the applicant's life and their interaction with each other, her employment, shared experiences and the date and manner she entered the United States. The affiants fail to indicate any other details that would lend credence to their claimed acquaintance with the applicant and the applicant's residence in the United States during the requisite period.

The director further noted that the applicant indicated on her Form I-687 that she was absent from the United States from September 1983 until January 1984. This absence coincides with the birth of the applicant's daughter in Mexico in October 1983 which she lists on her Form I-687. She also indicates that she lived in Juanaquato, Mexico from September 1983 until January 1984, a period of approximately four months.

The applicant shall be regarded as having resided continuously in the United States if at the time the application for temporary resident status is considered filed, as described above pursuant to the CSS/Newman Settlement Agreements, no single absence from the United States has exceeded 45 days, and the aggregate of all absences has not exceeded 180 days during the requisite period unless the applicant can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the applicant was maintaining a residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.2(h).

If the applicant's absence exceeded the 45-day period allowed for a single absence, it must be determined if the untimely return of the applicant to the United States was due to an "emergent reason." Although this term is not defined in the regulations, *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), holds that "emergent" means "coming unexpectedly into being." The applicant's absence constitutes break in any continuous residence that the applicant may have established and renders her ineligible for legalization benefits.

Therefore, based upon the foregoing, the applicant is ineligible for temporary residence because she failed to establish by a preponderance of the evidence that she 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*. Any temporary resident status previously granted to the applicant is terminated.

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