

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

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**



L,

DATE: **JUL 05 2012**

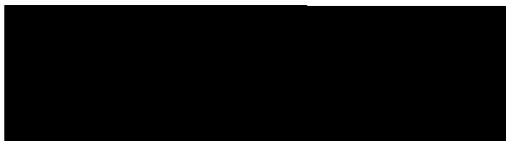
OFFICE: LOS ANGELES

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. The file has been returned to the National Benefits Center. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The applicant's temporary resident status under Section 245A of the Immigration and Nationality Act (Act) was terminated by the Field Office Director (director), Los Angeles. The decision to terminate is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant filed a Form I-687 application for temporary resident status under section 245A of the Act (Form I-687), together with a Form I-687 Supplement, CSS/Newman (LULAC) Class Membership Worksheet, on May 23, 2005. Her Form I-687 application was approved on February 6, 2008.

On January 3, 2012, the director terminated the applicant's temporary resident status, finding that the applicant had failed to establish her eligibility for temporary resident status.¹ The director noted that the applicant had submitted insufficient and contradictory evidence to establish her continuous unlawful residence in the United States. The director also noted that in response to a notice of intent to terminate (NOIT), the applicant submitted additional documentation but that the evidence of record was insufficient to establish her continuous unlawful residence in the United States during the requisite period. The director, therefore, terminated the applicant's temporary resident status for the reasons stated in the NOIT.

On appeal, counsel asserts that the applicant has submitted sufficient evidence to establish her eligibility for temporary resident status. Counsel also asserts that discrepancies in the record are not material to the applicant's claim. Counsel submits a brief and some of the same evidence provided earlier.

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.²

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 – under section 245A of the Immigration and Nationality Act (the Act) – 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. *See* 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. *See* 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. *See* 8 C.F.R. § 245a.2(b)(1).

¹ It is noted that on the Notice of Termination, the receipt Number: [REDACTED] is incorrect. The correct receipt number for the current Form I-687 is: [REDACTED]

²The 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).

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).

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).

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 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 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.

Although the regulations provide an illustrative list of contemporaneous documents that an applicant may submit, the list also permits the submission of affidavits and any other relevant document. *See* 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The issue in this proceeding is whether the applicant has established her eligibility for temporary resident status. As stated, the applicant must establish 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. The documentation that the applicant submits in support of her 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, employer letters, and birth certificates. The AAO has reviewed the witness statements in their entirety to determine the applicant's eligibility; however, the AAO will not quote each statement 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 AAO notes that the record includes sufficient evidence, including birth certificates and receipts, which cumulatively establish the applicant's continuous residence in the United States from February 1986 through the end of the requisite period.

The record includes the following evidence submitted by the applicant which pertains to the requisite period:

Affidavits & Declarations:

A declaration, dated November 16, 2006, from [REDACTED] attesting that the applicant resided with her at [REDACTED] from January 1981 to 1984.

Declarations, dated July 2, 2007, from [REDACTED] attesting to having known the applicant since 1983.

Declarations, dated July 2, 2007, from [REDACTED] attesting to having known the applicant since 1983.

An affidavit, dated July 18, 1990, from [REDACTED] attesting to having known the applicant to have resided in the United States since June 1983. [REDACTED] also attests that she met the applicant at her daughter's birthday party; that she and the applicant have been good friends and that they see each other at family gatherings and during holidays.

An affidavit, dated August 10, 1992, from [REDACTED] attesting that the applicant has been his common law wife since January 1985, and that she has cared for their household and children since that time.

In a notice of intent to terminate temporary resident status (NOIT), the director listed several inconsistencies. The director noted that on the applicant's Form I-687, the applicant reported her employment as house worker for [REDACTED] from August 1981 January 1982, but at the interview, she indicated that her employment with [REDACTED] lasted until 1984. The director noted that on her Form I-687, the applicant stated she worked at [REDACTED] from January 1982 to December 1985, but at the interview the applicant stated that she was employed by [REDACTED] from 1984 to 1986. The director noted that the applicant indicated on her Form I-687 that she had been a street vendor from December 1985 to July 1990, but stated at the interview that she was a street vendor from 1987 to 1990.

In addition, the director also noted that the applicant submitted a letter from [REDACTED] stating that the applicant was a member of the [REDACTED] from October 1981 to the date of the letter (1990) and that during her membership she resided at [REDACTED]. However, on your Form I-687, the applicant indicated that she commenced living at that address in June 1988.

In response to the NOIT, counsel contends that the discrepancies are minor clerical errors in dates and addresses in the Form I-687 applications and on the letters provided that are not material and can be explained considering the passage of several years. We note the applicant's response to the NOIT and we acknowledge that the long passage of time may suffice to explain clerical and date errors. However, due to the cumulative effect of these discrepancies, we find the documentation provided in support of the applicant's claimed residence and employment to be of minimal evidentiary value.

Letter of Employment

Also included in the record is a letter of employment, dated July 17, 1990, from [REDACTED] stating that the applicant had been employed as a packer from January 2, 1982 until December 2, 1985, and that she was paid \$150.00 in cash, per week. The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's 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.

[REDACTED] failed to provide the applicant's address at the time of employment, show periods of layoff, 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 as required under 8 C.F.R. § 245a.2(d)(3)(i). The letter, is therefore, shall be given nominal weight.

Organization Letter

In addition, the record of proceedings contains a letter, dated July 26, 1990, from [REDACTED] stating that the applicant has been a member since October 1981. The regulation at 8 C.F.R. § 245a.2(d)(3)(v) provides requirements for attestations made on behalf of an applicant by churches, unions, or other organizations. Attestations must: (1) Identify applicant by name; (2) be signed by an official (whose title is shown); (3) show inclusive dates of membership; (4) state the address where applicant resided during membership period; (5) include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; (6) establish how the author knows the applicant; and (7) establish the origin of the information being attested to. The letter from [REDACTED] does not comply with the above cited regulations because it does not: establish the origin of the information being attested to; and, that attendance records were referenced or otherwise specifically state the origin of the information being attested to. For this reason, the letter will be given only nominal weight.

As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the applicant's reliance upon documents with minimal probative value, it is

concluded that she has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982, through May 4, 1988.

Based on the foregoing analysis of the evidence, the AAO concludes that the applicant has failed to establish her continuous unlawful residence in the United States throughout the requisite period. Thus, the record does not establish that the applicant entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from that date through the date she attempted to file a Form I-687 during the original one-year application period that ended on May 4, 1988. Accordingly, the applicant is ineligible for temporary resident status under section 245A(a)(2) the Act.

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