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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]

L<sub>1</sub>

DATE: **JUL 05 2012** Office: HOUSTON, TEXAS

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

The director determined that the applicant did not submit sufficient credible evidence to establish that he entered the United States before January 1, 1982 and resided continuously in the country in an unlawful status through the requisite period and terminated the applicant's temporary resident status. Specifically, the director noted the applicant provided insufficient and/or contradictory evidence in support of his claim that he entered the United States before January 1, 1982 and resided continuously in the country through the requisite period, May 4, 1988.

On appeal, counsel asserts that the evidence previously submitted by the applicant 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 time period. Counsel contends that the applicant's application for temporary resident status was already reviewed and approved, and that the director's questioning of the evidence years later, violates the applicant's due process rights. Counsel does not submit new or additional evidence with the appeal. 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).

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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).

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 applicant, a native of India who claims to have lived in the United States since 1981, submitted a Form I-687, Application for Status as a Temporary Resident under section 245A of the Immigration and Nationality Act (Act), and Form I-687 Supplement, CSS/Newman Class Membership Worksheet on October 31, 2005. The application was approved on October 3, 2006. On March 1, 2012, the director terminated the applicant's temporary resident status.

In a Notice of Intent to Terminate (NOIT) dated February 24, 2010, the director noted that the evidence the applicant submitted in support of his application was substantively deficient and

contradictory to his prior statements and information on the Form I-687 application. The applicant was granted 30 days to submit rebuttal evidence.

The applicant timely responded to the NOIT, providing explanation for the evidentiary deficiencies and the inconsistencies noted by the director in the NOIT. On March 1, 2012, the director issued a Notice of Termination (NOT) terminating the applicant's temporary resident status on the grounds that the evidence submitted in rebuttal was insufficient to overcome the grounds of termination of temporary resident status as stated in the NOIT.

On appeal, counsel asserts that the evidence of record is sufficient to establish by a preponderance of the evidence that the applicant has continuously resided in the United States in an unlawful status through the requisite period and that he is eligible for the benefit sought. Counsel submits no new or additional evidence with the appeal.

The issue in this proceeding is whether the applicant has established his eligibility for temporary resident status. As stated, the applicant must establish 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 entered the United States before January 1982 and continuously resided in the country in an unlawful status for the requisite period includes, but is not limited to, statements and/or affidavits from individuals who claim to have employed or otherwise known the applicant in the United States during the 1980s; merchandise and rental receipts; copies of residential lease agreement; envelopes addressed to the applicant; and copies of bank documents. The AAO has reviewed the evidence in its 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 contains contradictory statements and documents that call into serious question the veracity of the applicant's claim that he continuously resided in the United States from before January 1, 1982 through May 4, 1988. On the Form I-687 application, the applicant indicated his residential address during the requisite period as:

- [REDACTED]
- [REDACTED]
- [REDACTED]

He indicated his employers during the requisite period as:

- [REDACTED]
- [REDACTED]

- [REDACTED]
- [REDACTED]

The record however contains an "Affidavit of Self Employment" sworn to by the applicant on July 15, 1999, stating that he was self-employed during the period October 1981 to 1988. This affidavit is inconsistent with the employment information provided by the applicant on the Form I-687. This inconsistency casts considerable doubt on the veracity of the applicant's claim of continuous residence in the United States during the requisite period. It calls into serious question the credibility and the reliability of the employment verification letters in the record as evidence of the applicant's residence in the United States during the requisite period. No evidence of record resolves this inconsistency. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence pointing to where the truth lies. 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). As a result, the AAO finds the remaining evidence in the record to be suspect.

The employment verification statements in the record from [REDACTED] do not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because the statements do not indicate the applicant's address during the periods of employment, do not provide a full description of the applicant's duties and responsibilities, and do not indicate whether the information about the applicant's employment were taken from the various company records, where the records are kept and whether such records are available for review. The statements are not supplemented by earnings statements, pay stubs, or tax records demonstrating that the applicant was actually employed during any of the periods indicated. In addition, the statements are inconsistent with the July 15, 1999 affidavit from the applicant indicating that he was self-employed from October 1981 through 1988. As previously stated, 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, id.* As a result, the AAO finds the employment verification statements not credible. They are not persuasive evidence of the applicant's residence in the United States during the requisite period.

The residential lease agreements dated May 25, 1986 and March 5, 1986, between the applicant and [REDACTED] respectively do not appear to be genuine. The [REDACTED] indicated that the lease was for [REDACTED] from March 15, 1986 to March 31, 1987. The lease agreements are inconsistent with the residential information provided by the applicant on the Form I-687 for the same period. As stated previously, on that form, the applicant listed the [REDACTED] address as his [REDACTED]. In addition, the AAO notes that it is implausible for [REDACTED]

the applicant to be residing concurrently at two different addresses at the same time, one in [REDACTED] [REDACTED]. The lease agreements are not credible and are not probative evidence of the applicant's residence in the United States for the periods indicated on the lease much less for the entire requisite period.

In a similar vein, the remaining documentation submitted by the applicant in support of his application, such as bank documents, envelopes, merchandise, rent and other kinds of receipts are not credible and probative. As an example, the envelope with the post mark date of October 1986, was addressed to the applicant at [REDACTED] but the applicant did not reside at the said address until June 1987. The merchandise receipts with handwritten notation of the applicant's name, dated in 1983, and 1985, do not bear an address of the applicant and the receipt dated August 18, 1984, indicated the applicant's address as [REDACTED]. The applicant did not indicate an address in [REDACTED] as his address in 1984, or at any other time during the requisite period. As previously stated, 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, id.* The applicant has provided no documentation to reconcile the inconsistencies; therefore the AAO finds that the applicant's remaining evidence consisting of witness statements and affidavits is suspect and not credible.

The inconsistencies discussed above are material to the applicant's claim in that they have a direct bearing on his residence and employment in the United States during the requisite period. No evidence of record resolves these inconsistencies. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence pointing to where the truth lies. As previously indicated, 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, Id.*

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 on the foregoing, the AAO finds that 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. As the applicant has not overcome the basis for the termination of status, the appeal must be dismissed.

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