

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 10 2012

OFFICE: TEXAS 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. 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 Texas Service Center Director. The decision to terminate is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record indicates that the applicant filed an 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 19, 1992. Her Form I-687 was approved on June 12, 2004.

On March 11, 2008, the director terminated the applicant's temporary resident status, finding that the applicant had abandoned her application by failing to respond to a notice of intent to terminate her temporary resident status (NOIT). In the NOIT, the director informed the applicant she had failed to timely submit her Form I-698 application to adjust from temporary to permanent resident status.

On April 7, 2008, the applicant, through counsel, submitted a Form I-694, requesting *sua sponte* reopening of the Form I-687. According to counsel, the director erred in terminating the applicant's temporary resident status. Counsel noted that the applicant was not notified until March 22, 2006 that her Form I-687 had been approved, and that she had filed her Form I-698 within 43 months of receipt of the approval notice. On November 21, 2011, the director *sua sponte* reopened the Form I-687 application, relinquished jurisdiction and forwarded the matter to the AAO as an appeal.

On April 24, 2012, the AAO issued a notice informing the applicant of the deficiencies in the record and providing her with an opportunity to respond and provide additional evidence. Specifically, the AAO requested that the applicant provide evidence that she entered the United States before January 1, 1982, and that she continuously resided in the United States in an unlawful status since such date for the duration of the requisite period. The applicant has not submitted any evidence in response to the AAO's request.

The director's decision is withdrawn, and the AAO will consider the applicant's claim *de novo*, evaluating the sufficiency of the evidence in the record, according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.2(d)(6).¹

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

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).

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 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 she continuously resided in the United States in an unlawful status throughout the requisite period.

At the time of completing her Form I-687 application, the applicant listed only one absence from the United States during the requisite period, specifically, from December 10, 1987 to January 14, 1988. The applicant did not indicate any other absences. The record reflects that on January 14, 1988 the applicant was admitted at Miami International Airport as a B-2 non-immigrant, with authorization to stay until July 13, 1988. Included in the record is a Form I-94 confirming the applicant's entry as a non-immigrant on January 14, 1988. However, in addition to her January 14, 1988 entry, the applicant's passport reveals that on February 8, 1983, she was issued a B1/B2 non-immigrant visa at the United States Embassy in Caracas, Venezuela, valid until February 8, 1987. The record also reflects that on October 7, 1987, the applicant was issued a B1/B2 non-immigrant visa at the United States Embassy in Caracas, Venezuela, valid until October 6, 1992. These visas also confirm the applicant's absence from the United States on February 8, 1983 and on October 7, 1987. As noted above, however, on her Form I-687 the applicant indicated only one absence from the United States, from December 10, 1987 to January 14, 1988. These discrepancies in the applicant's application, in the record, and in her supporting documentation, casts considerable doubts on whether the applicant has resided in the United States in an unlawful status throughout the requisite period as she claims. As stated above, 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, supra.*

In support of her application, the applicant has submitted several witness statements. The witness statements are general in nature, and state that the witnesses have knowledge of the applicant's residence in the United States during the requisite period. However, the statements of the witnesses lack sufficient detail, because they fail to provide concrete information specific to the applicant which would demonstrate that the witnesses have a sufficient basis for reliable knowledge about her residence in the United States during the requisite period. [REDACTED] wrote that the applicant had lived with her from 1981 to 1987.

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 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 the 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).

Dr. [REDACTED] wrote that he employed the applicant from February of 1985 to December of 1988. Dr. [REDACTED] letter does not fully comply with the above cited regulation because it does not: provide the applicant's address at the time of employment; describe the applicant's duties; state whether the information was taken from official records; and whether the Service may have access to the records. Given these deficiencies, this letter is of minimal probative value in supporting the

applicant's claims that she entered the United States before January 1, 1982 and continuously resided in the United States for the requisite period.

On her Form I-687, the applicant indicated she worked for [REDACTED] from October 1988. However, the applicant submitted an employer's letter from Ms. [REDACTED] stating that she employed the applicant from January 10, 1982 until December 20, 1984. Ms. [REDACTED] letter does not fully comply with the above cited regulation because it does not: provide the applicant's address at the time of employment; describe the applicant's duties; state whether the information was taken from official records; and whether the Service may have access to the records. Given these deficiencies, this letter is of minimal probative value in supporting the applicant's claims that she entered the United States before January 1, 1982 and continuously resided in the United States for the requisite period.

These discrepancies and lack of sufficient detail undermines the credibility of the applicant's claim of entry into the United States prior to January 1, 1982 and continuous unlawful residence in the United States during the requisite period.

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.