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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



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DATE: JUL 10 2012

OFFICE: HOUSTON, TX

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 was terminated by the Field Office Director, Houston, Texas. 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 is a native of Mexico who claims to have resided in the United States since December 1980. He 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 March 15, 2005. The Form I-687 application was approved on April 2, 2009.

On March 14, 2012, the director terminated the applicant's temporary resident status after determining that the applicant had failed to establish the requisite continuous unlawful residence and continuous physical presence. The director noted that the applicant responded to a January 27, 2012 Notice of Intent to Terminate (NOIT), but failed to submit sufficient evidence to overcome the reasons for termination. The director also noted that the evidence provided in support of the applicant's claim consisted of affidavits that lacked sufficient detail.

On appeal, counsel asserts that the evidence provided is to establish the applicant's eligibility for temporary resident status. Counsel submits a statement from the applicant and additional declarations from witnesses, 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.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 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

¹The 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).

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 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 for the requisite period. 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.

Letters of Employment

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.

- 1) A letter of employment, dated August 1, 1990, from [REDACTED] attesting that from December 1980 to November 1984, the applicant had been employed as a laborer with [REDACTED] also attests that during the applicant's employment she was a Supervisor with the company; that the applicant had been employed full-time and was paid [REDACTED]; that during his employment the applicant resided at [REDACTED]; and, that official records for the company do not exist.

It is noted, that [REDACTED] states that company records did not exist, but she does not indicate the sources of her information on the applicant's employment; or state the reason why such records are unavailable as required under 8 C.F.R. § 245a.2(d)(3)(i).

- 2) An affidavit from [REDACTED] attesting that during 1982 – 1983 the applicant did temporary handyman and repair work and was paid in cash at a weekly rate of \$120 to \$150.

It is noted, however, that [REDACTED] does not provide details, such as to indicate by whom the applicant was employed, the location where the applicant had been employed, or the dates when the employment commenced and ended. It is also noted, that the letter 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).

- 3) An undated letter of employment, from [REDACTED] stating that the applicant had been employed with his company since February 1985 on a contract labor basis on various jobs; and, he attests to the applicant's work habits.
- 4) An August 8, 1990 letter, from [REDACTED] stating that since 1987 the applicant worked with him and that the applicant never complained about having to work overtime.²

² We categorize the letter from [REDACTED] as a letter of employment. However, it is not clear from the letter, or from the record of proceedings, whether [REDACTED] was the applicant's employer, or whether he and the applicant were co-workers.

do not provide details of the applicant's employment. It is also noted, that the letters fail 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 letters will be given nominal weight as they do not conform to the regulatory requirements.

Affidavits & Declarations:-

- 1) Affidavits from [REDACTED] attesting to having known the applicant to have resided in the United States since 1980. [REDACTED] also attests that she met the applicant in 1980 while the applicant worked for one of her subcontractors; that the applicant resided at [REDACTED] from 1980 until around 1984; that in 1982 the applicant started doing temporary work as a handyman for her and was paid between \$125.00 and \$150.00 weekly; that they have remained friends; and she attests to the applicant's work habits and character.
- 2) Affidavits from [REDACTED] attesting that the applicant has been a friend and co-worker since 1983. [REDACTED] also attests that he has frequently been a guest at the applicant's home at [REDACTED] and, to the applicant's work habits and character.
- 3) Affidavits from [REDACTED] the applicant's brother-in-law, attesting to having known the applicant since June 1986. [REDACTED] also attests that he has visited the applicant at his home at [REDACTED] and, to the applicant's work habits and character.
- 4) Affidavits from [REDACTED] dated February 18, 2012 and April 2, 2012. In her February 18, 2012 affidavit, [REDACTED] attests to having known the applicant since 1987 and that in 1992 the applicant moved to her address at [REDACTED]. In her April 2, 2012 affidavit, [REDACTED] attests to having known the applicant since 1987; that the applicant has resided at [REDACTED] since 1987; and, to the applicant's work habits and character.
- 5) An October 10, 1990 affidavit from [REDACTED] attesting to having known the applicant to have resided in the United States since December 1980. [REDACTED] also lists the applicant's addresses in [REDACTED] since she met the applicant, and attests to his character and work habits.
- 6) An August 6, 1990 affidavit from [REDACTED] attesting to having known the applicant since 1981 and that she and applicant resided at the same apartment complex. The affiant also attests to the applicant's character.

- 7) An August 7, 1990 affidavit from [REDACTED] attesting to having known the applicant since 1985. [REDACTED] also attests that the applicant and her former husband worked together and became friends.
- 8) An August 1, 1990 affidavit from [REDACTED] attesting that the applicant resided at [REDACTED] from December 1980 until December 1984. The affiant also attests to the applicant's character.
- 9) An August 9, 1990 affidavit from [REDACTED] the applicant's brother, attesting that since June 1986, the applicant resided with him.
- 10) An August 6, 1990 affidavit from [REDACTED], attesting to having known the applicant for four (4) years; that he met the applicant when they resided at the same apartment complex; and he attests to the applicant's character.
- 11) An August 6, 1990 affidavit from [REDACTED] attesting that from September to October 1986 she and the applicant worked at the same company.
- 12) An August 7, 1990 affidavit from [REDACTED] attesting to having known the applicant since 1985. [REDACTED] also attests that for about three (3) years the applicant resided close to her; to the applicant's living and work habits; his Saturday routine of mailing letters and money to his wife; and to his character.
- 13) Affidavits, dated October 14, 1990, from [REDACTED] attesting that the applicant worked as a laborer with [REDACTED]. [REDACTED] The affiants also attest to their friendship with the applicant; and, that they speak frequently with the applicant.
- 14) A February 22, 202 affidavit from [REDACTED] attesting to having known the applicant to have resided in the United States since December 1980. [REDACTED] also attests to knowing that the applicant resided at [REDACTED] from 1980 until 1984; that he had been employed as a construction worker with [REDACTED] from 1980 until late 1984; that [REDACTED] was his supervisor in 1982 at the company; that she has hired him to do minor house repairs; that she and the applicant have maintained a friendship; and to the applicant's kindness and character.

Although the witnesses claim to have personal knowledge of the applicant's residence in the United States for all or part of 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. 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. The affidavits are, therefore, not probative of the applicant's continuous residence.

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 he 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 his 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 he 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.