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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]

41

DATE: **JUL 19 2012**

Office: HOUSTON

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 termination of temporary resident status by the Director, Houston, Texas, is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant submitted a Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (Act). The Form I-687 was approved. The director determined that the applicant did not establish by a preponderance of the evidence that he had entered and continuously resided in the United States in an unlawful status since prior to January 1, 1982, and for the duration of the requisite period and issued a Notice of Intent to Terminate (NOIT). The director terminated the applicant's temporary resident status, finding that the applicant had not met his burden of proof and that he was therefore not eligible to adjust from temporary resident status pursuant to Section 245A of the Act. Specifically, the director noted discrepancies in the testimony of the applicant and the witnesses.

Counsel states that there has been a misunderstanding based on the affidavits submitted that led to the director concluding that the affidavits were contradictory. Counsel submits additional evidence to explain the apparent discrepancies.

The regulation at 8 C.F.R. § 245a.2(u)(1)(i) prescribes that the status of an alien lawfully admitted for temporary residence under section 245A(a)(1) of the Act may be terminated at any time if "[i]t is determined that the alien was ineligible for temporary residence under Section 245A of this Act[.]"

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).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), "until the date of filing" shall mean until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file during the original legalization application period of May 5, 1987 to May 4, 1988. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

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 record in this case shows that the applicant was granted temporary resident status under section 245A(a)(1) of the Act. The director subsequently issued a NOI, informing the applicant of his failure to establish eligibility for temporary residence. The director found that the applicant failed to provide sufficient evidence to establish that he entered the United States prior to January 1, 1982 and resided in a continuous unlawful status in the United States during the requisite period, and terminated the applicant's temporary residence.

In the Notice of Intent to Terminate (NOIT), the director noted that the applicant failed to present sufficient evidence that he entered the United States prior to January 1, 1982 and lived in a continuous unlawful status during the requisite period. In rebuttal, the applicant provided affidavits and other evidence.

The issue in this proceeding is whether the applicant established 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 arrived in the United States before January 1, 1982 and lived in an unlawful status during the requisite period consists of affidavits and other evidence. The AAO has reviewed each document in its entirety to determine the applicant's eligibility; however, the AAO will not quote each witness statement in this decision. Some of the evidence submitted indicates that the applicant resided and/or the declarant/witness met the applicant in the United States before January 1, 1982 or after May 4, 1988; however, because evidence of residence before January 1, 1982 and after May 4, 1988 is not probative of residence during the requisite time period, it shall not be discussed.

The applicant submitted, as proof of his asserted date of entry into the United States and continuous unlawful residence in the United States for the requisite period, affidavits from [REDACTED]

[REDACTED] states in his initial statement that he witnessed the applicant's entry into the United States in 1977. In a subsequent statement, he clarifies that his knowledge of the applicant's date of entry was second-hand but that he met up with the applicant in Texas in 1979. [REDACTED] states that beginning in 1979, he and the applicant met regularly for family events and would see each other at football games. The declarant also claims that he found out through the applicant that he was working for [REDACTED] from 1981 to the end of 1989. The declarant does not give any other information about the applicant and the events surrounding their association during the requisite period.

[REDACTED] claims in her declaration that she has known the applicant since September 1984. [REDACTED] claims that she has seen the applicant at many events which include family gatherings, birthdays, and barbecues but does not give any details about these events. [REDACTED] attests to the applicant being a good friend but in general, gives little information about the applicant and details about the events surrounding her association with him during the requisite period. [REDACTED] also claims that she moved to Alvin Texas, and although they communicated by phone, she states that she rarely saw the applicant during those four years. [REDACTED] states that she saw the applicant again at the [REDACTED] store after returning to Houston, Texas, but does not state when she returned to Houston, Texas and when she saw the applicant at [REDACTED]

states in his declaration that the applicant came to the United States in 1977 and when he came later they lived together from place to place. This statement is inconsistent with the information given by the applicant on his Form I-687 application. The applicant claims he entered the United States without inspection in June 1973. It is incumbent upon the applicant to resolve any inconsistency 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. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). also claims that he socialized with the applicant but does not give any details about the places, parties, and family gatherings and the dates and frequency of these events. The declarant also stated that he lived with the applicant but fails to state when and where they lived together.

states in his declaration that he has been friends with the applicant since 1965. states that the applicant came to the United States in search of a better future. The declarant claims they were raised together, they lived together for a while in the United States, they communicated every day and even managed to work together for a while. The declarant does not give any details concerning these events.

states in his declaration that he has been friends with the applicant since February 1982, when they met when riding with the same person to and from work. claims they have been neighbors for four years but does not say when and where they were neighbors. states that they visit and communicate weekly.

states in her letter that she met the applicant through their work for on March 15, 1983. states that they attended many events together such as family gatherings, parties, and get-togethers and they communicate twice a week. does not give any details concerning these events.

states in his declaration that he met the applicant in 1983. Throughout these years the applicant states that they shared many things at personal and family levels. states that they would visit relatives and attend social events but does not give any details about these events. The declarant attests to the applicant's good moral character but does not give any other information about the applicant and the events surrounding their association during the requisite period.

states that he knows the applicant since 1960 when they were children in Mexico. claims they worked for from 1982 through 1988. The applicant claims on his Form I-687 that he worked for from February 15, 1981 to December 20, 1989. It is incumbent upon the applicant to resolve any inconsistency in the record by independent objective evidence. *See Matter of Ho, supra*. claims that he socialized with the applicant but does not give any details about the places, family gatherings, and other social events and the dates and frequency of these events.

The declarations and letters submitted by the applicant are judged according to their probative value and credibility and not the quantity of letters submitted by the applicant. 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. The AAO finds that the witness statements do not provide sufficient detail. In many of the letters which are noted, the witnesses did not sufficiently explain the facts stated in their letters/declarations. For the aforementioned reasons, the AAO finds that the witness statements can only be given nominal weight.

While an applicant's failure to provide evidence other than affidavits/declarations shall not be the sole basis for finding that he failed to meet the continuous residency requirements, an application which is lacking in contemporaneous documents cannot be deemed approvable if considerable periods of claimed continuous residency rely entirely on affidavits/declarations which are considerably lacking in certain basic and necessary information. The witnesses' statements are significantly lacking in detail and do not establish that the witnesses actually had personal knowledge of the events and circumstances of the applicant's initial entry and residence in the United States. An applicant applying for adjustment of status under this part has the burden of proving by a preponderance of evidence that he or she is eligible for adjustment of status under section 245a of the Act, 8 C.F.R. § 245a.2(d)(5). The applicant has failed to provide probative and credible evidence of his entry into the United States prior to January 1, 1982 and continuous unlawful residence in the United States during the requisite statutory period.

The applicant also submits an identification card issued to [REDACTED] born on May 8, 1952. However, the spelling of the applicant's name and date of birth are incorrect on the identification card and the card reflects no date of issuance, so it will be given no weight.

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). The applicant has been given the opportunity to satisfy his burden of proof. The AAO finds that the applicant's temporary resident status was properly terminated pursuant to section 245A(b)(2) of the Act and the corresponding regulation at 8 C.F.R. § 245a.2(u)(1)(iv). Thus, the appeal in this matter will be dismissed.

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