

Administrative Appeals Office
U.S. Citizenship and Immigration Services
Washington, DC 20529-2090

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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**



41

DATE: JUN 05 2012

Office: HOUSTON

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:

SELF-REPRESENTED

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.

On appeal, the applicant states that during the hurricane that affected Beaumont, where he lived for over 15 years, his car burned down with all his important possessions. The applicant claims that he had to proceed from memory in reconstructing his life and was unable to recall all the details and obtain proof for the years 1982-1986 as many of the people are deceased or their whereabouts are unknown.

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[.]" The applicant bears the burden to 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).

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 NOIT, 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 notes 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 an affidavit stating he had no new evidence to submit and a computer printout of social security earnings reflecting registered earnings commencing in the year 1992. The applicant provided no other documentation with his response.

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 applicant claims on his class determination form that he first entered the United States without inspection in 1977.

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 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 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, letters from [REDACTED]

In a letter, [REDACTED] states that he has known the applicant for many years but does not state when he met the applicant. [REDACTED] states that he met the applicant's brother, [REDACTED], in 1982, after he arrived in Beaumont. Mr. Pelaex states that a couple of years later, the applicant came to Beaumont, Texas, at the suggestion of his brother, [REDACTED] because there were better jobs in Beaumont than in California where they both were employed at different times working in the field. [REDACTED] attests to the applicant having all his possessions in his car because of an evacuation of the area due to a hurricane threat. [REDACTED] does not give any other information about the applicant and the events surrounding their association during the requisite period.

In her letter, [REDACTED] states that she has known the applicant since 1981-82 when the applicant came to live in Beaumont. However, the applicant claims on his current Form I-687 application that he did not reside in Beaumont, Texas, until 1986. There is a question mark after the year 1986. [REDACTED] also states that she knows the applicant has worked for several construction companies in the area among them [REDACTED]

[REDACTED] However, the applicant claims on his current Form I-687, that he worked at [REDACTED] from 1991-1992 and does not claim to work for any of the other companies stated by the witness on either his initial or current Form I-687 applications. [REDACTED] also states that the applicant told her that before coming to Beaumont, he lived several years in California where he did field work. [REDACTED] does not give any other information about the applicant and the events surrounding their association during the requisite period.

In a letter, [REDACTED] states that he has known the applicant since childhood and that they both were born in [REDACTED]. [REDACTED] states that he knows the applicant left for California in 1979 with his brother and that they lived in California for about three years and did field work. This information conflicts with the applicant's claim to have entered the United States without inspection in 1977. [REDACTED] does not give any other information about the applicant and the events surrounding their association during the requisite period.

The witnesses claim generally that since meeting the applicant, they have become good friends. The witnesses attest to the applicant's good moral character but in general, the witnesses give little information about the applicant and the events surrounding their association with him during the requisite period.

The 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 affiants did not sufficiently explain the facts stated in their letters. 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 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 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. The letters do not provide much relevant

information beyond acknowledging that they generally met the applicant in the 1980s. 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.

states that the applicant was employed on a contract basis in his landscaping firm from 1987 to present. The owner states that the applicant worked at least once every two-three months on an as-needed basis and was paid in cash. 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. The letter does not state the applicant's address at the time of employment, identify the exact period of employment, the applicant's duties and whether the information was taken from company records, records that the witness may have maintained or the witness's own recollection. Therefore, the letter will be given nominal weight.

The applicant provided copies of two receipts within the requisite period dated July 30, 1987 and February 28, 1988. The receipts state that \$150 was received from for rent on but the city and state are omitted. Further, the applicant claims on his initial Form I-687 application that he did not reside at the address that appears on the rental receipt until January 1990.

Furthermore, the information given on the applicant's initial and current Form I-687 applications contains discrepancies. The applicant claims on his initial Form I-687 application that he resided at from 1979 to 1985 and from 1986 to 1989. The applicant claims on his current Form I-687 application that he resided at from 1979 to 1985. There is question mark after the year 1985. The applicant also notes that he lived at other addresses for short periods of time but does not give any details. The applicant also claims on his current Form I-687 application that he resided at from 1986 to 1989. There is a question mark after 1986. No evidence in the record can resolve the inconsistencies. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

¹ The AAO notes that a P.O. Box does not constitute a place of residence.

The applicant also submitted two earning statements that are dated January 9, 1986 and January 23, 1986. The applicant's employer's name does not appear on the earning statements and therefore, the earning statements cannot be identified as belonging to the applicant. This evidence does not serve to confirm the applicant was in the United States on those dates and does not establish continuous residence throughout the requisite period.

The applicant states in his letter dated March 31, 2012 that during the hurricane that affected Beaumont, where he lived for over 15 years, he suffered a personal hardship when his car caught afire with all his important possessions. The applicant states that he is unable to obtain proof for the years 1982-1986. The applicant does not mention in his letter when the hurricane occurred and when his automobile was damaged by the fire. The applicant does not mention in his letter why the evidence housed in his car was not provided to United States Citizenship and Immigration Services (USCIS) with his initial and current Form I-687 applications.

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.