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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



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DATE:

Office: HOUSTON, TEXAS

FILE:



MAR 20 2012

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. 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 application for 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 contradictory statements and documentation in support of his Form I-698, Application to Adjust Status from Temporary to Permanent Resident under the Act.

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 does not submit additional evidence on 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.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 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

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).

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 Mexico who claims to have lived in the United States since 1979, 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 April 1, 2005. The application was approved on July 11, 2008. On July 8, 2011, the director terminated the applicant's temporary resident status.

In a Notice of Intent to Terminate (NOIT) dated October 29, 2010, the director noted that the affidavits the applicant submitted in support of his application were not credible and that some of the affidavits contradicted the applicant's 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. The applicant submitted copies of affidavits previously submitted in the record. On July 8, 2011, the director issued a Notice of Termination (NOT) terminating the applicant's temporary resident status on the grounds that the information submitted in rebuttal was insufficient to overcome the grounds of termination of temporary resident status stated in the NOIT.

On appeal, counsel asserts that the evidence previously submitted by the applicant establishes by a preponderance of the evidence that he has continuously resided in the United States in an unlawful status through the requisite period. Counsel also asserts that the applicant had testified truthfully under oath about his continuous residence in the United States, which was corroborated by affidavits from friends and acquaintances. Counsel contends that any evidentiary deficiencies had been cured by the applicant's response to the NOIT.

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 had continuously resided in an unlawful status for the requisite period consists primarily of affidavits from individuals who claim to have employed or otherwise known the applicant in the United States during the 1980s. 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.

There is no contemporary documentation from the 1980s that shows the applicant to have resided continuously in the United States during the requisite period for legalization. For someone claiming to have lived in the United States since 1979, it is noteworthy that the applicant is unable to produce a solitary piece of primary evidence during the following eight years through May 4, 1988.

The AAO notes that the applicant has submitted contradictory statements and documents in support of his application. On the Form I-687 the applicant completed and filed on March 16, 1990, he listed one absence from the United States during the requisite period, a trip to Mexico to visit his sick father from July 13, 1987 to August 5, 1987. On the instant Form I-687, the applicant listed five absences from the United States during the requisite period – from September 1981 through March 1988.

The record contains a Form G-325A, Biographic Information, dated May 28, 2002, which the applicant completed under oath, and submitted with a Form I-485, Application to Register

Permanent Resident or Adjust Status, that he filed on June 5, 2002. On that form, the applicant listed his residences in the United States as:

██████████ Dallas, Texas, from August 1979 to December 2000; and
██████████ ██████████ Dallas, Texas, from December 12, 2000 to the
present (May 28, 2002).

The applicant does not list any other address as his residence in the United States during the 1980s. On the current Form I-687, the applicant listed his residences in the United States as:

██████████ Dallas, Texas, from August 1982 to 1987;
██████████ ██████████ Dallas, Texas, from August 1987 to December 2000, and
██████████ ██████████ Dallas, Texas, from December 2000 to January
2003.

The record also contains: (1) a statement dated March 5, 1990, from ██████████ who identified himself as a ██████████ in Dallas, Texas. ██████████ claims that the applicant was employed as a maintenance man at ██████████ from January 1, 1982 to April 30, 1982 and again from May 18, 1984 to June 1, 1985; and (2) a statement dated March 2, 1990, from ██████████ who identified herself as a ██████████ at Wyatt's in Dallas, Texas. ██████████ claims that the applicant was employed as a dishroom attendant from May 11, 1982 to May 13, 1984.

The statements above regarding the applicant's employment in the United States during the 1980s, 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 description of the applicant's duties and responsibilities, and do not indicate whether the information about his employment were taken from company records, do not indicate where the records are kept and whether such records are available for review. The statements are not supplemented by any earnings statements, pay stubs, or tax records demonstrating that the applicant was actually employed during any of the years claimed. In addition, the statement from ██████████ is contrary to a prior Sworn Statement completed by the applicant on March 27, 1991. In that statement, the applicant stated that he never worked for ██████████ that he does not know a ██████████ and that he paid \$25 for the statement from him in support of his application and to establish his residence in the United States during the years indicated. When confronted with this inconsistency in the NOIT, the applicant submitted his own self-serving affidavit in response with no independent objective evidence to the contrary.

The inconsistencies discussed above are material to the applicant's claim in that they have a direct bearing on his residence 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. 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). Accordingly, these contradictions undermine the credibility of the applicant's claim of entry into the United States prior to January 1, 1982 and continuous residence in the United States during the requisite period.

As for the affidavits in the record from individuals who claim to have known the applicant resided in the United States during the 1980s, they have minimalist or fill-in-the-blank formats with very few details from the affiants. Considering the length of time they claim to have known the applicant – in most cases since 1981 – the affiants provided very few details about the applicant's life in the United States and the nature and extent of their interactions with him over the years. The affiants do not state how they date their initial meeting with the or how they acquired knowledge of when or how the applicant entered the United States. The affidavits are not accompanied by any documentary evidence – such as photographs, letters, and the like – demonstrating the affiants' personal relationships with the applicant in the United States during the 1980s. While some of the affiants provided documentation to establish their identities, none provided evidence of their residence in the United States during the requisite period.

In an affidavit dated March 2, 1990, [REDACTED] claims that he was the applicant's landlord at [REDACTED] Dallas, Texas, from 1980 to 1987, and at [REDACTED] from 1987 to present (March 2, 1990). This affidavit is inconsistent with the residential information listed by the applicant on the Form G-325A, dated May 28, 2002. The applicant did not list either of the two addresses as one of his addresses in the United States during the 1980s. This inconsistency calls into serious question the veracity of the applicant's claim and the credibility of [REDACTED] affidavit as evidence of the applicant's continuous residence in the United States during the requisite period. The applicant has failed to provide any independent objective evidence to reconcile the inconsistency. 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.*

In view of the substantive shortcomings and the inconsistencies discussed above, the AAO finds that the affidavits have little probative value. They are not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988.

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 resolve the inconsistencies in the record with independent objective evidence. Furthermore, 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.