

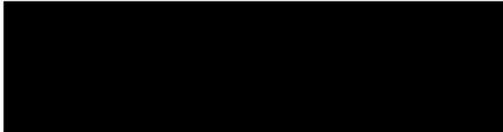
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W. MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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DATE: **MAY 08 2012** Office: LOS ANGELES, CA. 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.


for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The termination of the applicant's temporary resident status by the Field Office Director (director), Los Angeles, is now before the Administrative Appeals Office on appeal. 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 has failed to establish by a preponderance of the evidence that she 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.

On appeal, the applicant asserts that she has been residing in the United States since 1981 and that the evidence of record establishes her continuous unlawful residence in the United States during the requisite period. The applicant submitted additional statements from witnesses attesting to her residence in the United States during the requisite period. The AAO has considered the applicant'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 continuous residence in the United States in an unlawful status since prior to January 1, 1982, the

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).

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 January 1981, 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 October 28, 2005. The application was approved on May 17, 2007. On November 1, 2011, the director terminated the applicant's temporary resident status.

In a Notice of Intent to Terminate (NOIT) dated September 13, 2011, the director noted that the record contains contradictory and inconsistent evidence regarding the applicant's entry and continuous residence in the United States during the requisite period. The director also noted that some of documents submitted by the applicant were unverifiable and therefore have little

probative value as evidence of the applicant's residence in the United States during the requisite period. The applicant was granted 30 days to submit rebuttal evidence.

The applicant timely responded to the NOIT with an explanation for the evidentiary deficiencies cited in the NOIT, but failed to provide a reasonable explanation for the inconsistencies cited in the NOIT. The applicant submitted copies of witness statements previously submitted in the record. On November 1, 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.

On appeal, the applicant asserts that she has been residing in the United States since 1981 and that the evidence of record establishes her continuous unlawful residence in the United States during the requisite period. The applicant submitted additional statements from witnesses attesting to her residence in the United States during the requisite period.

The issue in this proceeding is whether the applicant has established her eligibility for temporary resident status. As stated, the applicant must establish that she (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 her claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists of witness statements, copies of registered mail receipts and copies of generic receipts issued to the applicant for payment of rent. 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.

The record contains copies of United States Post Office registered mail receipts with postmark dates of April 24, 1981, April 29, 1981 and October 25, 1982, issued to the applicant for mail she sent to individuals in Mexico. While the receipts listed the applicant's claimed address in the United States at the time, they do not demonstrate that the applicant continuously resided in the United States in 1981 and 1982, much less for the entire requisite period. Moreover, the receipts are not verifiable, and therefore have little evidentiary weight.

The record also contains a copy of a dental receipt from [REDACTED] for services rendered on August 5, 1983. The name of the patient is not discernable and no address is listed for the patient. Thus, the dental receipt has no probative value as evidence of the applicant's residence in the United States. The copy of the Physician's Permit signed by a [REDACTED] states that the applicant was under the physician's care from October 15 to October 21, 1985, and that she is able to return to school/work on October 22, 1985. The document does not bear the

applicant's address and therefore has little probative value as evidence of the applicant's continuous residence in the United States during the requisite period.

On the Form I-687, the applicant indicated that she was employed by [REDACTED] as a personal assistant from February 1981 to October 2005. In support of this assertion, the applicant submitted a letter from [REDACTED], prepared on a letterhead of [REDACTED]. [REDACTED] states that the applicant has been employed at the restaurant for at least five and one-half years. The letter from [REDACTED] does not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because it does not provide the applicant's address during the period of employment, does not indicate whether the information about the applicant was taken from company records, does not indicate where the records are kept and does not indicate whether such records are available for review. The letter is not supplemented by earnings statements, pay stubs, or tax records demonstrating that the applicant was actually employed at the restaurant. In addition, the letter is inconsistent with the information provided by the applicant on the Form I-687. While the applicant claims that she was employed by [REDACTED] as a personal assistant from February 1981, the letter from [REDACTED] states that the applicant was employed at his restaurant, first as a cashier, then an assistant manager, and currently the general manager. In addition, while the applicant claims that she worked for [REDACTED] from 1981 to 2005, [REDACTED] stated in his August 17, 2011 letter that the applicant has been at the restaurant for five and half years. For all the reasons discussed above, the employment letter has little probative value. It is not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through the requisite period.

The witness statements in the record from individuals who claim to have resided with or otherwise known the applicant during the 1980s, have minimalist formats. Considering the length of time they claim to have known the applicant – in most cases before 1981 – the witnesses provided very few details about the applicant's life in the United States and the nature and extent of their interactions with her over the years. The statements are not accompanied by any documentary evidence – such as photographs, letters, and the like – demonstrating the witnesses' personal relationships with the applicant in the United States during the 1980s. In addition, some of the witnesses claim to have personal knowledge that the applicant has been residing in the United States prior to 1981. Their statements are inconsistent with the applicant's statement that she first entered the United States in January 1981. In view of these substantive shortcomings and inconsistencies, the AAO finds that the statements 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.

The AAO finds that the applicant has failed to provide probative and credible evidence of her continuous residence in the United States during the requisite period. The inconsistencies discussed above are material to the applicant's claim in that they have a direct bearing on the applicant's residence and employment 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). 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.

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 she 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 she 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 she 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.