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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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U.S. Citizenship
and Immigration
Services

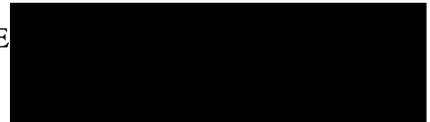
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DATE: Office: TEXAS SERVICE CENTER FILE

MAY 10 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 J. Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application for temporary resident status under section 245A of the Immigration and Nationality Act (Act) was denied by the director, Texas Service Center. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a native of Mexico who claims to have lived in the United States since 1980, submitted a Form I-687, Application for Status as a Temporary Resident under Section 245A of the Act on June 26, 2001. The record reflects that on November 30, 2011, the director denied the application, finding that the applicant had not established by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status for the duration of the requisite period.

On appeal, the applicant asserts that the director erred in denying his application. He reasserts his claim that he entered the United States before January 1, 1982 and has continuously resided in the country through the requisite period. The applicant provided an explanation for the contradictions noted by the director and submitted updates to witness statements previously submitted in the record. 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

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).

For purposes of establishing residence and physical presence under the CSS/Newman Settlement Agreements, the term "until the date of filing" in 8 C.F.R. § 245a.2(b) means 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

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.

The issue in this proceeding is whether the applicant (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 of time. Here, the applicant has failed to meet his burden. The documentation that the applicant submits in support of his claim to have arrived in the United States before January 1982 and had lived continuously in an unlawful status during the requisite period consists primarily of witness statements. 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.

The record reflects that the applicant submitted conflicting and contradictory statements regarding his entry and continuous residence in the United States during the requisite period. The applicant has not provided a reasonable explanation for the contradictions. On the current Form I-687 filed by the applicant in June 2001, he stated that he first entered the United States in 1980. He listed his addresses in the United States as: 2026 Embury, Houston, Texas, from April 1980 to July 1984; and [REDACTED] from July 1984 to the present (June 2001). The applicant indicated his employer during the said period as [REDACTED], from June 1980 to 1991. The applicant also indicated that he traveled outside the United States to Mexico on four separate occasions: June to July 1983; April to May 1984, to get married; within the month of September 1986; and from April 20, to May 25, 1987.

On appeal, the applicant submitted a statement indicating that he began to reside in the United States in April 1981. He stated that he traveled outside the United States to Mexico on four separate occasions, however, he provided different dates for the trips. The dates provided by the applicant were: June 6 to July 3, 1983; March 4 to April 1, 1985, to get married; September 13 to September 28, 1986; and April 20 to May 25, 1987. The inconsistencies regarding the applicant's entry date and continuous residence in the United States during the requisite period, call into question the veracity of his claim that he had continuously resided in the United States from before January 1, 1982 through May 4, 1988.

In support of his application, the applicant submitted two statements from [REDACTED], dated in 1990 and 2011. On the 1990 statement, [REDACTED] claims that the applicant was employed from May 1982 to 1991 as a laborer. On the 2011 statement, [REDACTED] claims that the applicant was employed on a part-time basis as a mason assistant from June 1980 until May 1982, and thereafter was employed full-time from May 1982 to February 1991. The applicant indicated on the Form I-687 that he was employed by [REDACTED], from June 1980 to 1991.

The statements of employment from [REDACTED] 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 period of employment, do not indicate whether the information about the applicant's employment was obtained from the company records or personal knowledge, and do not indicate whether the records are available for verification. In addition, the statements are not supplemented by earnings statements, tax records or other documentation to demonstrate that the applicant was actually employed during the period indicated. As a result of the contradictions in the dates of the applicant's employment and the discussed substantive shortcomings, the statements of employment have little probative value as evidence of the applicant's continuous residence in the United States during the requisite period.

The statements and affidavits in the record from witnesses who claim to have lived with or otherwise known the applicant resided in the United States during the 1980s, have minimalist or

fill-in-the-blank formats with very little input by the witnesses. Considering the length of time they claim to have known the applicant – in most cases since 1980 - the witnesses 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 statements and affidavits are not accompanied by documentary evidence – such as photographs, letters, and the like – demonstrating the witnesses' personal relationships with the applicant in the United States during the 1980s. The affidavits and statements are completely devoid of any details that would lend credibility to the witnesses' claimed relationship with the applicant and provide no basis for concluding that they actually have a direct and personal knowledge of the events and circumstances of the applicant's residence in the United States during the requisite period.

In addition, some of the statements are inconsistent with the applicant's own statements and information on the Form I-687. For instance, [REDACTED] who identified himself as the applicant's uncle, stated on his November 10, 1990 affidavit that the applicant resided at [REDACTED], and on his December 13, 2011 statement, he claimed that the applicant resided at [REDACTED] [REDACTED] did not indicate when the applicant entered the United States or the period of time the applicant resided at the said addresses. [REDACTED], claims that he has known the applicant from 1980 and that he and the applicant lived together at [REDACTED] from 1987. It is to be noted that the applicant indicated on the Form I-687 that he resided at the [REDACTED] address from July 1984. For all the reasons discussed above, the AAO finds that the statements and affidavits in the record have little probative value. They are not persuasive evidence of the applicant's continuous residence in the United States during the requisite period.

The AAO finds that the applicant has failed to provide probative and credible evidence of his continuous residence in the United States from before January 1, 1982 through May 4, 1988. 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).

Upon a *de novo* review of all of the evidence in the record, the AAO finds 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 in the United States during the requisite 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 requisite period, and thus are not probative.

Therefore, based upon the foregoing, 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.

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