

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]

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Date: OCT 22 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 director of the Houston office terminated the temporary resident status of the applicant, pursuant to the terms of the CSS/Newman Settlement Agreements, finding the applicant to be ineligible for temporary resident status based on a lack of documentation in the record of proceedings.

On appeal, counsel for the applicant asserts that the director's decision is erroneous because the evidence which the applicant previously submitted 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 period. On appeal, the applicant has submitted three additional witness statements, from [REDACTED] respectively. 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 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

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).

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 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 arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists of witness statements and other documents. The AAO has reviewed the documents in their 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 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 period, it shall not be discussed.

The record contains witness statements from

██████████ and ██████████. The statements are general in nature, and state that the witnesses have knowledge of the applicant's residence in the United States for all, or a portion of, the requisite statutory period.

Although the witnesses claim to have personal knowledge of the applicant's residence in the United States during the requisite period, the witness statements do not provide concrete information, specific to the applicant and generated by the asserted associations with him, which would reflect and corroborate the extent of those associations, and demonstrate that they were a sufficient basis for reliable knowledge about the applicant's residence in the United States during the requisite period. For example, ██████████ states that he was acquainted with the applicant from 1981 to 1987 at the applicant's workplace, ██████████ in Houston, met him quite often when he bought items at the applicant's workplace, and has been acquainted with the applicant since that time. ██████████ states that he met the applicant in the United States in 1981 at the house of a common friend, witness ██████████, on ██████████ in Houston. He states that the applicant was present in the United States from 1981 to 1987, and he offered him rides to work at ██████████. ██████████ states that he and the applicant were friends in Pakistan, and he saw the applicant at the applicant's place of employment at ██████████ during the period from 1981 to 1987. The witness states that the applicant later worked for him. ██████████ states that the applicant resided with him from June 1986 through the end of the requisite period on ██████████ in Houston.

██████████ provide a listing of the applicant's addresses from June 1981 through the end of the requisite period and state that they met the applicant either at a common friend's house or at ██████████. ██████████ states that he has been on friendly terms with the applicant since 1986, when they met at the house of a common friend.

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. For instance, the witnesses do not state how they date their initial meeting with the applicant in the United States. ██████████

██████████ do not state where the applicant resided during the requisite period. In addition, the witnesses do not specify social gatherings, other special occasions or social events when they saw and communicated with the applicant during the requisite period. The witnesses also do not state how frequently they had contact with the applicant during the requisite period. The witnesses do not provide sufficient details that would lend credence to their claimed knowledge of the applicant's residence in the United States during the requisite period. For these reasons the AAO finds that the witness statements do not indicate that their assertions are probably true.

² The AAO notes that ██████████ and ██████████ use almost identical language in describing where they met the applicant. The AAO also notes that ██████████ and ██████████ use almost identical language in describing where they met the applicant.

The record contains three employment verification letters from [REDACTED] in Houston and two employment verification letters from [REDACTED] in Houston. In two statements, one undated and one dated December 16, 1990, [REDACTED] states that the applicant worked for [REDACTED] as a landscaping helper, clerk and handyman from June 1981 through December 1987. However, in a third statement dated December 18, 1990 [REDACTED] states that the applicant has been working for [REDACTED] since September 1990.³ [REDACTED] states that the applicant worked for [REDACTED] as a helper/cleaner from January 1988 through the end of the requisite period.⁴

In addition, the employment verification letters of [REDACTED] and [REDACTED] do not meet the requirements set forth in the regulations, which provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment. The regulation at 8 C.F.R. § 245a.2(d)(3)(i) provides that letters from employers must include: (A) Alien's address at the time of employment; (B) Exact period of employment; (C) Periods of layoff; (D) Duties with the company; (E) Whether or not the information was taken from official company records; and (F) Where records are located and whether the Service may have access to the records. If the records are unavailable, an affidavit-form letter stating that the alien's employment records are unavailable and why such records are unavailable may be accepted in lieu of subsections (E) and (F). The employment verification letters fail to comply with the above cited regulation because they lack considerable detail regarding the applicant's employment. For instance, the witnesses do not state the number of hours or days the applicant was employed or his address at the time of employment. Further, the witnesses do not state how they were able to date the applicant's employment. It is unclear whether they referred to their own recollection or any records they may have maintained. Lacking relevant information, the letters regarding the applicant's employment fail to provide sufficient detail to verify the applicant's claim of continuous residence in the United States for the duration of the requisite statutory period. For these reasons, the employment verification letters are of minimal probative value.

The record contains a stamped envelope addressed to the applicant on [REDACTED] in Houston which the applicant labeled as having been sent in 1984. However, due to the fact that the postmark date is illegible the envelope is not evidence in support of the applicant's residence in the United State during the requisite period.

The remaining evidence in the record is comprised of copies of the applicant's statements, the instant I-687 application, the initial I-687 application signed by the applicant on December 10, 1990

³The AAO notes that in the initial I-687 application signed by the applicant in 1990, the applicant listed employment with [REDACTED] from June 1981 to December 1987 and from September 1990 until at least December 10, 1990, the date the initial I-687 application was signed. However, in the instant I-687 application, the applicant states that beginning in September 1990 he was employed as a cashier by a [REDACTED] in Houston. While outside of the requisite period the inconsistency calls into question the veracity of the applicant's testimony concerning his continuous residence in the United States during the requisite period.

⁴The AAO notes that the applicant lists as his current residence the employment address of [REDACTED] at a [REDACTED] on [REDACTED] in Houston.

and filed to establish his CSS class membership, a Form I-485, application to adjust to permanent resident status under the Legal Immigration Family Equity (LIFE) Act and a United Saudi Commercial Bank document dated October 19, 1986. The AAO finds in its *de novo* review that the record of proceedings contains materially inconsistent statements from the applicant regarding the dates of his absences from the United States during the requisite period.

In the initial I-687 application the applicant stated that he first entered the United States in June 1981. In a class member worksheet filed with the initial I-687 application, the applicant stated that he first entered the United States in May 1981. In the initial I-687 application and in the instant I-687 application, the applicant listed residences in Houston from May/June 1981 through the end of the requisite period. The applicant listed employment in Houston from June 1981 through the end of the requisite period. The applicant listed three absences from the United States during the requisite period, from August to September 1982, November to December 1983 and September to October 1987.

The record contains a G-325A, biographic information sheet which the applicant signed on September 12, 2001, filed contemporaneously with the I-485 application. The Form G-325A requests applicants to list their last address outside the United States of more than one year. On the form, the applicant stated that from an unknown date until 1981 he resided in ██████████ Karachi, Pakistan.

The record contains a United Saudi Commercial Bank document dated October 19, 1986 listing the applicant's residence on that date as being in ██████████ Karachi, Pakistan. However, in the two I-687 applications, the applicant failed to list an absence from the United States in 1986.

On the initial I-687 application and on the I-485 application, the applicant listed a son born in Pakistan on April 19, 1982. This child would have been conceived in July 1981. At the time of his interview on January 3, 2006, the applicant stated that his wife has never been to the United States. However, in the two I-687 applications, the applicant failed to list an absence from the United States in July 1981.

The director of the Houston office set forth the lack of documentation in the record of proceedings in a notice of intent to terminate (NOIT) the applicant's temporary residence. In rebuttal to the NOIT, the applicant submitted additional witness statements and asserted that the evidence which he previously submitted 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 period. On appeal, the applicant has submitted additional witness statements. All of the witness statements submitted by the applicant have been discussed, above.

As stated previously, 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 the evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6). Here, the applicant has failed to provide probative and credible evidence of his continuous residence in the United States for the duration of the requisite period.

In addition, the inconsistencies regarding the dates of the applicant's absences from the United States during the requisite period are material to his claim in that they have a direct bearing on the applicant's 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). 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 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 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.