

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

L1

[Redacted]

Date: **OCT 24 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 upon both a lack of documentation and inconsistent documentation in the record of proceedings. The applicant appealed the decision. The Administrative Appeals Office (AAO) initially rejected the appeal as late. The AAO withdraws its decision of May 15, 2012, finding the appeal was timely filed. The appeal will be dismissed.

The entire record was reviewed and considered in rendering this decision.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 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

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).

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 for 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/affidavits and copies of postmarked envelopes.

The AAO has reviewed the witness statements in their 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 the following:

1. An affidavit from [REDACTED] in which he certified that he had known the applicant since November 1981, and that the applicant worked for him from December 1981 to December 1986. Mr. [REDACTED] stated that the applicant did farm work and "different kinds of odd jobs around here," and that he paid the applicant \$4.00 per hour in addition to room and board. Mr. [REDACTED] address was listed as [REDACTED]
2. An affidavit from [REDACTED] in which he stated that the applicant is a friend and that he had known him since 1981.
3. An envelope addressed to the applicant at [REDACTED] with a canceled postmark of October 20, 1984.

4. An affidavit from [REDACTED], in which she stated that she had known the applicant since 1984, when he lived close to [REDACTED] in Liberty Texas, where she worked. Ms. [REDACTED] stated that the applicant came to the store every day and waited for work. This statement is inconsistent with the statements of the applicant and [REDACTED] who stated that the applicant worked for Mr. [REDACTED] from 1981 to 1986.
5. An affidavit from [REDACTED] in which he stated that he was a friend of the applicant and had known him since 1985.
6. An affidavit from [REDACTED], in which he stated that he met the applicant in 1986 "outside of [REDACTED]"; explained that the store was a location where day laborers gathered and that the applicant "has and still does work" for him on his farm. We note that [REDACTED] and the applicant stated that the applicant worked for Mr. [REDACTED] from 1981 to December 1986, and that on his Form I-687 application, the applicant reported no other employment until June 1987.
7. An affidavit from [REDACTED], in which she stated that she met the applicant in 1986 when he came to live with his brother and sister-in-law, [REDACTED] in [REDACTED]. This statement is inconsistent with the statement of [REDACTED] discussed further below, in which she stated that the applicant came to live with the family in 1987. Further, as noted below, the applicant did not claim to have lived at this address during the qualifying period.
8. An affidavit from [REDACTED] in which he stated that the applicant worked for his company, Specialty Service, from June 15, 1987 to August 10, 1989. Mr. [REDACTED] did not state whether the information regarding the applicant's employment was taken from company records and did not identify the applicant's address at the time he worked for the company, as required by 8 C.F.R. § 245a.2(d)(3)(i).
9. An affidavit from [REDACTED] in which she declared that the applicant had lived with her and her family since 1987. Ms. [REDACTED] stated that they had resided at [REDACTED], and at their current address at [REDACTED] did not state the date that the family had lived at [REDACTED] and the applicant did not list this address as one of his residences on his Form I-687 application.
10. An envelope addressed to the applicant at [REDACTED]. The postmark date on the envelope is illegible. Nonetheless, the applicant did not claim to have ever lived at this address. The applicant did not submit any evidence to explain this inconsistency. *Matter of Ho*, 19 I&N Dec. at 591-92.
11. An envelope addressed to the applicant at [REDACTED] with a postmark dated April 11, 1988.

The applicant has provided inconsistent statements regarding his residency and work history during the qualifying period. Additionally, while he submitted envelopes that tend to show he was present in the United States in 1984, 1987 and 1988, some of the addresses do not correspond with those at which the

applicant stated that he lived during those periods. Accordingly, we find that the applicant's evidence does not establish by a preponderance of the evidence that he resided continuously in the United States during the qualifying 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. 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 time 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, or 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.

The director of the Houston office cited some of the aforementioned inconsistencies in a notice of intent to terminate (NOIT) the applicant's temporary residence. In rebuttal to the NOIT, the applicant asserted that he worked for Morgan Homes and Specialty Services on an "as needed" basis, which explains the apparent inconsistency as to when he worked for whom.

The applicant did not address many of the inconsistencies raised by the director. These contradictions are material to the applicant's claim in that they have a direct bearing on the applicant's residence in the United States for the duration of the requisite period. As stated above, 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, supra*. The 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.

The AAO finds that 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.

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 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 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. 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.