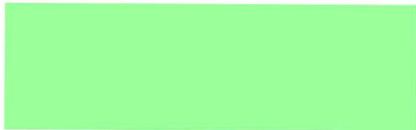


U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Service  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W. MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

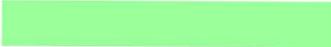
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Date: **AUG 13 2014**

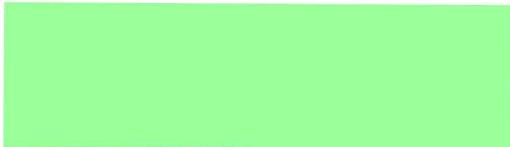
Office: HOUSTON

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:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Houston Field Office Director terminated the applicant's temporary resident status. The decision is now before the Administrative Appeals Office (AAO) on appeal.<sup>1</sup> The appeal will be dismissed.

The director terminated the applicant's temporary resident status, finding the applicant to be ineligible based on both a lack of credible documentation and inconsistencies in the record of proceedings. On October 8, 2013, the applicant appealed the director's decision to the AAO.

On appeal, counsel asserts that the applicant "should not be burdened at this point to produce evidence to support his application which was sufficiently made available to your office at the initial request and was found to be satisfactory and he was granted the benefit that he applied for." On appeal, counsel submits additional evidence in support of the applicant's claim. We have considered counsel's assertions, reviewed all of the evidence, and have made a *de novo* decision based on the record and our assessment of the credibility, relevance and probative value of the evidence.<sup>2</sup>

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). Here, the director determined that the applicant failed to establish his continuous residence due to lack of credible documentation and inconsistencies in the record. Therefore, the director did not err and acted accordingly within his authority under the regulations.

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

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<sup>1</sup> On the Form I-694 submitted on October 8, 2013, counsel checked the box indicating that the appeal was for a Permanent Residence (I-698) application. However, because counsel indicated that he was appealing the director's decision dated October 22, 2013, which is the director's Notice of Termination of the applicant's Application for Status as a Temporary Resident (Form I-687), the appeal will be accepted as an appeal for the applicant's Form I-687 application.

<sup>2</sup> 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).

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. 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 provided sufficient evidence to 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 affidavits. The

affidavits have been reviewed in their entirety to determine the applicant's eligibility; however, each witness statement will not be quoted 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 applicant indicated on his Form I-687 application that he entered the United States without inspection in October 1981 with his father. He indicated that he resided at [REDACTED] Texas from January 1981 to January 1986, and at [REDACTED] Texas from January 1986 to July 1995. During an interview, the applicant stated that from 1981 through 1985, he stayed at home with his older brother and did not work or go to school. He states that he began performing yard work around the age of 14 years. On his Form I-687, he indicates that he worked at [REDACTED] Texas, from January 1985 through January 1989.

The record contains relevant affidavits from [REDACTED]. The statements are general in nature. In the director's Notice of Termination, the director noted that most of the submitted affidavits failed to state how the affiant met the applicant, the frequency or circumstances of their interactions, lacked sufficient details, and contained no credible anecdotal or documentary evidence. On appeal, the applicant submits updated affidavits from four of the seven affiants, as well as additional evidence, however, this additional evidence is not probative of the applicant's residence during the requisite period; therefore, it shall not be discussed.

All of the updated affidavits state that the affiants have known the applicant since 1981. The updated affidavit from [REDACTED] states that his father and the applicant's father were close friends, and that their families lived close to each other. He further states that the applicant lived in the United States without his mother, and that the affiant and the applicant visit each other from time to time.

The updated affidavit from [REDACTED] states that the applicant's father used to clean her yard and do maintenance work. The affiant states that she has personally known the applicant since 1981 and she has found him to be a good person during all these years. She further states that the applicant also cleaned and did chores in and around her yard.

The updated affidavit from [REDACTED] states that he has known the applicant since early 1981 because he sometimes helped the applicant's father to send money to Mexico for his sick wife. He further states that the applicant has frequent contact with him to help clean and fix his garden.

The updated affidavit from [REDACTED] states that he has known the applicant since December 1981 through the applicant's father and their families were close friends. The affiant states that when he was friends with the applicant's father, he met the applicant, who worked alongside his father.

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 sufficient concrete information, specific to the applicant and generated by the asserted associations with him, or even the applicant's father, which would reflect and corroborate the extent of those associations, and demonstrate that they have a sufficient basis for reliable knowledge about the applicant's residence in the United States throughout the requisite period. While the affiants provide general information, they do not provide sufficient details that would lend credence to their claimed knowledge of the applicant's continuous residence in the United States throughout the requisite period.

In a notice of intent to terminate the applicant's temporary resident status, the director advised the applicant of an inconsistency between the information he provided in his Form I-687 application. Specifically, the director noted that the applicant indicated that he began residing in the United States in January 1981 and that he first entered the country in October 1981. The applicant failed to address this inconsistency either in his rebuttal or on appeal.

The evidence in the record, in totality, fails to provide sufficient details which would reflect and corroborate a reliable knowledge of the circumstances of the applicant's residence during the entire requisite period. The applicant has failed to meet his burden of proof. Given this, the record establishes that the applicant's claim of continuous residence in the United States throughout the requisite statutory period is probably not true. Upon a *de novo* review of all of the evidence in the record, the AAO finds that the applicant has not established that he is eligible for the benefit sought.

Based on the above, 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.