

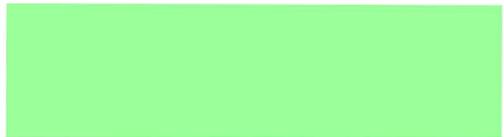


**U.S. Citizenship
and Immigration
Services**

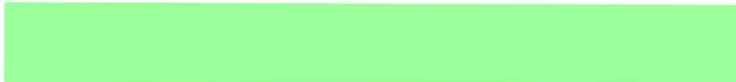
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Date: **JAN 31 2014** Office: HOUSTON

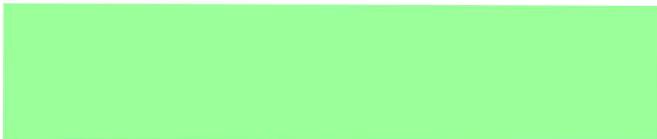


IN RE:



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.

If your appeal was dismissed, 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.

Thank you.

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

for

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Houston Field Office Director initially approved the application for temporary resident status under Section 245A of the Immigration and Nationality Act (Act). Subsequently, the director terminated the applicant's temporary resident status. The decision to terminate temporary resident status is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The director determined that the applicant had not established by a preponderance of the evidence that he had continuously resided in the United States for the duration of the requisite period. The director terminated the applicant's temporary resident status, finding that the applicant had not met his burden of proof and was, therefore, not eligible to adjust to temporary resident status.

On appeal, the applicant asserts that he has provided sufficient evidence to establish continuous, unlawful residence in the United States for the requisite period.

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 period, 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. 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.

Even if the director has some doubt as to the truth, if the petitioner 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 has furnished sufficient credible evidence to demonstrate that he entered before 1982 and continuously resided in the United States throughout the requisite period. The applicant submitted numerous witness statements. At least four of the witnesses included copies of their identification cards for verification purposes. The director advised the applicant that he found discrepancies in the evidence.

Discrepancies

In a notice of intent to terminate the applicant’s temporary resident status (NOIT), the director noted that he had found discrepancies in numerous affidavits. However, the director did not specify the discrepancies and it is not apparent what he meant by discrepancies in the affidavits.

In the NOIT, the director indicated there were discrepancies between the applicant’s testimony listed on his Form I-687 application and the information listed on documents he provided to the director in connection with his Form I-698 application. The director determined that the addresses listed on the documents did not match the addresses provided on the Form I-687. In a NOIT, the director wrote:

“You submitted a copy of a Texas Driver License that expired on November 3, 2001. The license appears to have been issued in 1998. The address is listed as [REDACTED].”

“On your Form I-687 . . . you listed the following addresses: . . . [REDACTED] from September 1995 to June 2000.”

The two items are consistent. The applicant had a driver’s license valid in the years 1998 to 2001 with an address that is identical to the address he provided on his Form I-687 for the years 1995 to 2000.

In the NOIT, the director noted a discrepancy between the address listed on a [REDACTED] [REDACTED] issued in 1992 and the addresses he provided on his Form I-687. On the former the applicant indicated he resided on [REDACTED] but no such street address is listed on his Form I-687.

Discrepancies detract from the credibility of the evidence, but minor discrepancies, such as those found in this record of proceedings, are not fatal to the applicant’s claim of continuous residence. Further, to the extent the discrepancies relate to the post-requisite period, they are not material.

Relatives' testimony

In the NOIT, the director ascribed no weight to affidavits signed by individuals with the same last name as the applicant. "Service notes that [four] affiants have the same last name as [the applicant's], 'Valle.'"

The regulations do not prohibit the submission of statements from relatives. The regulations state that "the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L)." Each document warrants an independent evaluation. *See Matter of E-M-, supra*. Further, each affidavit was signed under the penalty of perjury. An applicant who knowingly submits fraudulent documents is subject to severe criminal penalties. *See* Section 245A(c)(6) of the Act, 8 U.S.C. § 245

Same notary

The director discounted the value of affidavits that were notarized by the same notary. In the NOIT, the director wrote, "The affiant [REDACTED] also has the same notary as [REDACTED]. [REDACTED]" The director failed to explain the significance of using the same notary. The mere fact that more than one affiant used a specific notary does not diminish the value of their testimony.

Supporting evidence

In the NOIT, the director discounted the affidavits' evidentiary value because the affiants failed to submit proof that they were in the United States during the stator period, that they had a relationship with the applicant or submit "any tangible evidence" to support their statements.

The regulations do not require the applicant to submit tangible evidence to support the affiants' statements. If the director had doubt as to the probity of the affidavits, he should have promptly issued a request for additional evidence. Eight years have lapsed since the date of the affidavits and the director's decision.

The applicant has established by a preponderance of the evidence that he entered the United States before January 1, 1982 and maintained continuous, unlawful residence for the duration of the requisite period. Consequently, the applicant has overcome the particular basis of denial cited by the director.

The appeal will be sustained.

ORDER: The appeal is sustained.