



U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED]  
XEL 88 033 4032

Office: TEXAS SERVICE CENTER

Date: **AUG 08 2007**

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: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application for temporary resident status was initially denied by the Director, Southern Regional Processing Facility. A subsequent denial was issued by the Director, Texas Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

In the latest denial, the director determined that the applicant failed to establish continuous unlawful residence in the United States since prior to January 1, 1982.

On appeal, the applicant provides an explanation for his absence from the United States in 1988 and claims that he was not allowed to reenter the United States to proceed with the legalization process.<sup>1</sup>

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).

An applicant for temporary resident status under section 245A of the Act has the burden to establish 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 and is otherwise eligible for adjustment of status under this section. 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).

When something is to be established by a preponderance of the evidence it is sufficient that the proof establish that it is probably true. *See Matter of E-M-*, 20 I&N Dec. 77 (Comm. 1989).

Although Service regulations provide an illustrative list of contemporaneous documents that an applicant may submit, the list also permits the submission of affidavits and any other relevant document. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

In the present matter, the only evidence submitted to establish the applicant's unlawful residence in the United States consists of three pay stubs and an employment letter from one employer and eight other pay stubs from another employer. It is noted that the pay stubs combined account for the months of June-September of 1988. The applicant also provided a sworn affidavit dated October 23, 1996 in which he claimed to have resided in the United States during various periods of time commencing in 1972. However, the applicant also stated that he went to Mexico sometime in 1980 or 1981 and did not return to the United States until October 1982. Thus, by the applicant's own account in the affidavit, he failed to maintain continuous unlawful presence in the United States since prior to January 1, 1982.

Additionally, the applicant did not provide any evidence of his residence in the United States for any time other than the four-month time period in 1988 for which contemporaneous evidence was submitted. The minimal evidence furnished cannot be considered extensive, and in such cases a negative inference regarding the documentation may be made as stated in 8 C.F.R. § 245a.2(d)(5).

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<sup>1</sup> The appeal statement, dated June 6, 1993, references Section 210A of the Act, indicating that the applicant seeks classification as a special agricultural worker. However, the record shows that the applicant filed a Form I-687 pursuant to Section 245A of the Act. As such, the applicant's eligibility will be reviewed under the statutory and regulatory provisions that are relevant to the legalization application filed in the present matter.

Accordingly, given the applicant's own statement admitting his absence from the United States directly prior to January 1, 1982 and the overall absence of evidence, contemporaneous or otherwise, to establish the beneficiary's unlawful residence in the United States during the required period, this application cannot be approved.

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