



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
MSC-05-171-10601

Office: LOS ANGELES

Date: DEC 08 2009

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:



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.

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Los Angeles Director terminated the applicant's temporary resident status. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant submitted a Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (Act). The Form I-687 was approved. Subsequently the applicant filed a Form I-698, Application to Adjust from Temporary to Permanent Residence. The director determined that the applicant had not established by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status since prior to January 1, 1982, and for the duration of the requisite period and issued a Notice of Intent to Terminate. The director noted that the applicant testified under oath during his interview that he had entered the United States in December 1982, and that the evidence of record was inconsistent with his statements. The director terminated the applicant's temporary resident status, finding that the applicant had not met his burden of proof and that he was therefore not eligible to adjust to temporary resident status pursuant to Section 245A of the Act.

On appeal, counsel asserts that the applicant incorrectly stated that he entered the United States in December 1982, and that in fact, he entered the country in December 1981. The applicant does not submit any new evidence on appeal.

Section 245A(b)(2) of the Act states, in pertinent part:

Termination of temporary residence. – The [Secretary of Homeland Security] shall provide for termination of temporary resident status granted an alien under subsection (a) –

* * *

(A) if it appears to the Attorney General that the alien was in fact not eligible for such status.

The corresponding regulation at 8 C.F.R. § 245a.2(u)(1)(i) further prescribes that the status of an alien lawfully admitted for temporary residence under section 245A(a)(1) of the Act may be terminated at any time if “[i]t is determined that the alien was ineligible for temporary residence under Section 245A of this Act[.]” The applicant bears the burden to 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)..

The record in this case shows that the applicant was granted temporary resident status under section 245A(a)(1) of the Act. However, the applicant admitted to initially entering the United States in December 1982, which is subsequent to January 1, 1982. The evidence submitted by the

applicant's brother and uncle do not overcome the basis for termination. The Form I-687 states that the applicant first resided in the United States in August 1981, not December 1981 as stated by the applicant's brother and uncle. The inconsistencies cast doubt on the applicant's proof. 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. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). These inconsistencies are material in that they raise doubts about whether the applicant resided in the United States throughout the requisite period. The applicant has failed to overcome the director's basis for termination. Accordingly, the appeal will be dismissed.

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