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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



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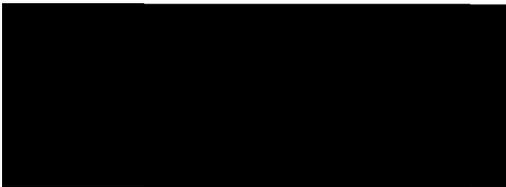
IN RE:

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:

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 applicant's status as a temporary resident was terminated by the Director, Houston, Texas. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant was granted temporary resident status on July 5, 2005 under section 245A of the Immigration and Nationality Act (Act), as amended, 8 U.S.C. § 1255a. However, the regulation at 8 C.F.R. § 245a.2(b)(1) states in pertinent part, "the temporary resident status may be terminated [if] it is determined that the alien was ineligible for temporary residence under section 245A of this Act."

On January 13, 2009, the director issued a Notice of Intent to Terminate (NOIT) the applicant's temporary resident status. The NOIT indicated that the information regarding residence provided by the applicant was incomplete and inconsistent. The director provided the applicant with an opportunity to address insufficiencies in the evidence. The applicant failed to overcome the reasons stated in the NOIT and, therefore, the director terminated the applicant's temporary residence on November 17, 2009. The applicant filed a timely appeal.

On appeal, the applicant indicates that United States Citizenship and Immigration Services (USCIS) erred in terminating his temporary resident status using a standard of proof higher than warranted by the regulations.

Section 245A(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255a(b)(2) states in pertinent part that the Act provides for termination of temporary residence status granted to an alien if it appears to the Attorney General [now Secretary, Department of Homeland Security] that the alien was in fact not eligible for such status, or the alien commits an act that makes the alien inadmissible to the United States as an immigrant, or the alien is convicted of any felony or three or more misdemeanors committed in the United States. *See also* 8 C.F.R. § 245a.4(b)(20)(i)(A).

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Following *de novo* review, the AAO finds that the applicant has failed to establish his continuous residence in the United States from January 1, 1982 through the end of the relevant 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 245(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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her 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).

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).

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.* at 80. 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, 431 (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 established 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 of time. In support of his eligibility, the applicant submits the following:

- Affidavits from [REDACTED] While the affiants indicate that they met the applicant during the relevant period, their statements do not include sufficient detailed information about the applicant's continuous residency in the United States since before January 1, 1982 and throughout the requisite period. They do not indicate how they date their initial acquaintance with the applicant, how frequently they saw the applicant during the relevant period, or where the applicant lived during the relevant period.
- An affidavit from [REDACTED] who indicates that the applicant, her nephew, lived with her at [REDACTED] in Houston, Texas until August 1984.
- A letter from [REDACTED] Apartments indicating that the applicant rented an apartment from August 1984 until October 1985.
- A letter from [REDACTED] Church indicating that the applicant has been a member of the congregation since December 31, 1985. This letter does not conform to the statutory requirements for attestations by churches, unions, or other organizations, which is found at 8 C.F.R. § 245a.2((d)(3)(v). That regulation requires such attestations to “show the inclusive dates of membership and state the address where the applicant resided during the membership period.” The letter does not provide the address where the applicant resided during the relevant period or any other information

that is probative of the issue of his initial entrance to the United States prior to January 1981 or his continuous residence for the duration of the statutory period.

- Copies of earnings statements for the years 1983 until 1988 from [REDACTED]. The records from 1983 through 1986 indicate the applicant's address as [REDACTED] in Houston, Texas. The applicant does not list this address on his Form I-687, which casts doubt on the reliability of these records.

As noted by the director, the record contains conflicting information regarding the applicant's initial entrance to the United States and his subsequent departures during the relevant period. The record contains a Form I-205 Record of Deportation which indicates that the applicant's first entrance to the United States was on January 6, 1982. On appeal, the applicant indicates that he was nervous and gave the USCIS officers incorrect information. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92. The applicant has not provided independent objective evidence which resolves this inconsistency.

The record also contains inconsistent information regarding the applicant's departures from the United States during the relevant period. On his Form I-687, the applicant indicates that he departed the United States in July 1986 and again in May 1987. However, in a previous Form I-687 filed in 1991, the applicant indicated an absence in 1985. Also, in an interview with USCIS on September 5, 2003, the applicant indicated that he departed the United States only once, in 1986. The director indicated in the Notice of Intent to Terminate (NOIT) that the applicant's testimony regarding his absences was inconsistent. On appeal, the applicant indicates that he mistakenly attested to a departure in 1985 because he truly believed his voluntary departure occurred in 1985 not 1986 as indicated by the record.

The applicant has the burden of proving by a preponderance of the evidence that he has resided in the United States for the requisite period. 8 C.F.R. § 245a.2(d)(5). To meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. 8 C.F.R. § 245a.2(d)(6). In this case, the applicant has not provided any evidence, apart from his own testimony, that resolves the inconsistencies in the record.

Therefore, based upon the foregoing, the applicant is ineligible for temporary residence because he 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*. Any temporary resident status previously granted to the applicant is terminated.

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