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

U.S. Citizenship and Immigration Services

[redacted]

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FILE: [redacted] Office: LOS ANGELES Date: FEB 14 2011

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. 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, Los Angeles. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The Administrative Appeals Office (AAO) issued a Notice of Intent to Terminate (NOIT) on November 30, 2010 withdrawing the director's grounds for termination and requesting further information regarding the applicant's continuous residence in the United States during the relevant period. The applicant was afforded 20 days to respond to the NOIT. The applicant submitted a timely response, however, the evidence submitted is insufficient to overcome the insufficiencies noted in the NOIT. The appeal will be dismissed.

The director terminated the applicant's temporary resident status because he failed to file the application for adjustment of status from temporary to permanent residence within the 43-month application period.

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 the alien fails to file for adjustment of status from temporary to permanent resident on Form I-698 within forty-three months of the date he/she was granted status as a temporary resident under § 245a.1 of this part. 8 C.F.R. § 245a.2(u)(1)(iv). The burden to file the adjustment application in a timely manner remains with the applicant. *See* 8 C.F.R. § 245a.3(d).

The record reflects that the applicant was granted temporary resident status on April 20, 2006. The 43-month eligibility period for filing for adjustment expired on November 19, 2009. The Form I-698, Application for Adjustment of Status from Temporary to Permanent Resident, was first received by United States Citizenship and Immigration Services (USCIS) on January 4, 2010. Thus, the director terminated the applicant's temporary resident status.

The record contains a Notice of Action dated April 20, 2006 indicating the applicant was in valid temporary resident status through April 19, 2010, a date after the expiration of the 43 month period. As such, the AAO found that the applicant overcame the director's basis for terminating temporary resident status. However, in a NOIT dated November 30, 2010, the AAO informed the applicant that he failed to submit sufficient evidence of his continuous residence in the United States during the relevant period. He was afforded 15 days to respond with additional evidence. The applicant submitted a timely response, including a statement and the birth certificates of his children.

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 throughout 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 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).

For purposes of establishing residence and physical presence under the CSS/Newman Settlement Agreements, the term "until the date of filing" in 8 C.F.R. § 245a.2(b) means until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file during the original legalization application period of May 5, 1987 to May 4, 1988. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

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 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.

The AAO notes that the applicant has not provided sufficient evidence of either his entry prior to January 1, 1982 or his residence in the United States from the time of entry through the end of the relevant period. The evidence contained in the record which pertains to this period consists of the following:

- Affidavits from [redacted]
  The affiants do not indicate how they date their initial meeting with the applicant, how frequently they had contact with the applicant, or how they had personal knowledge of the applicant's presence in the United States. To be considered probative and credible, witness affidavits must do more than simply state that an affiant knows the applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Upon review, the AAO finds that, individually and together, the witness statements do not indicate that their assertions are probably true. Therefore, they have little probative value.

- School records from Los Angeles Unified School District indicating that the applicant entered the school district in February 1982 and departed the district in March 1983. The Los Angeles school records list the applicant's address as [redacted]
  However, the applicant lists residences in Los Angeles on [redacted]
  for this period. Due to these inconsistencies, these documents have little probative value.

- School records from Orange Unified School District indicating that the applicant entered the district on September 21, 1984 and remained a student throughout the relevant period.

- An immunization record indicating that the applicant received immunizations throughout 1981, 1982 and on April 4, 1983.

The applicant shall be regarded as having resided continuously in the United States if at the time the application for temporary resident status is considered filed, as described above pursuant to the CSS/Newman Settlement Agreements, no single absence from the United States has exceeded 45 days, and the aggregate of all absences has not exceeded 180 days during the requisite period unless the applicant can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the applicant was maintaining a residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.2(h).

If the applicant's absence exceeded the 45-day period allowed for a single absence, it must be determined if the untimely return of the applicant to the United States was due to an "emergent reason." Although this term is not defined in the regulations, *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), holds that "emergent" means "coming unexpectedly into being."

The AAO noted in the NOIT that the applicant had not submitted evidence, aside from the affidavits noted, that concerns the period between April 1983 and September 1984. He was provided an additional opportunity to supplement the record and establish his eligibility.

On appeal, the applicant indicates that his mother passed away and he does not have any additional evidence to submit. He submits copies of the birth certificates of his children who were born in the United States after the relevant period. The record reveals that on February 27, 1994, the applicant was arrested for a violation of Section 496.1 of the California Penal Code (CPC) Receipt of Stolen Property (Sheriff's office of Santa Ana, case number [redacted]. Because the application will be denied on other grounds, the AAO will not request a copy of the court disposition for this arrest.

Therefore, based upon the foregoing, 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 entire 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. Any temporary resident status previously granted the applicant is hereby terminated.

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