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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

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DATE: JUN 06 2011 Office: LOS ANGELES FILE: [redacted]

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 Deny (NOID) on March 25, 2011 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 21 days to respond to the NOIT. The applicant submitted one additional affidavit and additional copies of school transcripts. The evidence submitted is insufficient to overcome the grounds stated in the NOIT. The appeal will be dismissed.

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 January 21, 2006. The 43-month eligibility period for filing for adjustment expired on August 20, 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 19, 2010. Thus, the director denied the Form I-698 and terminated the applicant's temporary resident status.

The record contains a Notice of Action dated January 24, 2006 indicating the applicant was in valid temporary resident status through January 23, 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 NOID dated March 25, 2011, the AAO informed the applicant that she failed to submit sufficient evidence of her continuous residence in the United States during the relevant period. She was afforded 21 days to respond with additional evidence.

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 her 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 her entry prior to January 1, 1982 or her 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:

- An affidavit from [redacted] who indicates that she is the applicant's sister and that she has lived in the United States since 1979.
- An affidavit from [redacted] indicating that the applicant lived with her at [redacted] beginning in September 1979. She indicates that the applicant attended school from 1982 until 1985.
- A letter from [redacted] dated August 26, 1993, indicating that the applicant attended school from February 1983 until June 1965. This is obviously an error. The 1965 is amended to 1986, however, this does not match the transcripts submitted from the school district which indicate that the applicant was enrolled until June 1985. This letter is accompanied by transcripts from San Fernando High School indicating that the applicant was enrolled at the school from February 1983 until June 1985.

On appeal, the applicant submits copies of official transcripts [redacted] which were previously submitted. The school records provided establish the applicant's residence in the United States between February 1983 and June 1985. However, the affiants' testimony is not sufficient to establish either her entry to the United States prior to January 1, 1982 or her residence in the United States after June 1985. The only additional evidence submitted on appeal consists of an affidavit signed by [redacted] indicating that she has known the applicant since 1979. She does not indicate how she dates her initial acquaintance with the applicant, where the applicant lived or how often she saw her during the relevant period. This affidavit does not contain sufficient detail to be considered probative.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that she 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.