

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



**U.S. Citizenship
and Immigration
Services**

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DATE: **APR 02 2012**

OFFICE: TEXAS SERVICE CENTER 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:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the National Benefits Center. If your appeal was sustained, or if the matter 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.

Thank you,

Handwritten signature of Perry Rhew.
perry Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application for temporary resident status under Section 245A of the Immigration and Nationality Act (Act) was terminated by the Director, Texas Service Center (director). The decision to terminate is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record indicates that the applicant is a native of Pakistan who claims to have resided in the United States since August 1981. He filed an application for temporary resident status under section 245A of the Act (Form I-687), together with a Form I-687 Supplement, CSS/Newman (LULAC) Class Membership Worksheet, on May 16, 1990. The application was approved and the applicant was granted Temporary Resident Status on June 10, 2005.

On March 22, 2011, the director issued a Notice of Intent to Terminate (NOIT) after determining that the applicant had failed to establish his eligibility for Temporary Resident Status. The director noted in the NOIT that the evidence of record consisted of affidavits attesting to the applicant's residence in the United States during the requisite period were of little evidentiary value as the documents lacked sufficient detail. The director requested that the applicant provide evidence demonstrating his continuous unlawful residence and continuous physical presence in the United States during the requisite period. The director granted the applicant thirty (30) days to submit additional evidence.

On June 8, 2011, the director terminated the applicant's temporary resident status for the reasons stated in the NOIT. The director noted that the applicant did not respond to the NOIT and denied the application for abandonment. It is noted, however, that the record indicates that the applicant did respond to the NOIT and submitted an affidavit from [REDACTED] as additional evidence.

On appeal, counsel asserts that the applicant has provided sufficient evidence to establish his eligibility for Temporary Resident Status. Counsel submits additional evidence.

The AAO has reviewed all of the evidence, and has made a *de novo* decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the evidence.¹

An applicant for temporary resident status – under section 245A of the Immigration and Nationality Act (the Act) – 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. *See* 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. *See* 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. *See* 8 C.F.R. § 245a.2(b)(1).

¹The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

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)(1) 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. *See* 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 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).

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 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 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.

Although the 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. *See* 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant’s employment must: provide the applicant’s address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant’s duties; declare whether the information was taken from company records; and identify the location of such company records

and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he continuously resided in the United States in an unlawful status from before January 1, 1982 through the date he attempted to file a Form I-687 during the original one-year application period that ended on May 4, 1988. After reviewing the entire record, the AAO determines that he has not.

The record reflects that in an attempt to establish his continuous unlawful residence in the United States during the requisite period, the applicant submitted the following documents: a fill-in-the-blank affidavit from [REDACTED] attesting to having known the applicant since 1981; similar affidavits from [REDACTED] attesting to having known the applicant since 1981 and stating that the applicant had been his tenant from August 1981 to March 1984; and similar affidavits from [REDACTED] attesting to having known the applicant in the United States since 1982. In addition, in response to the NOIT, the applicant submitted another affidavit from [REDACTED] attesting that the applicant had been his tenant in New York from August 1981 to March 1984.

These affidavits, however, lack specific details, such as how the affiants knew the applicant, how they date their acquaintance with the applicant, and whether and how frequently they had contact with the applicant since they met. As such, these affidavits are of little evidentiary value in establishing the applicant's continuous unlawful residence during the requisite period.

In addition, the applicant has submitted questionable documentation. Specifically, in his affidavit, [REDACTED] attests that the applicant was his tenant at [REDACTED] from August 1981 to March 1984. On his Form I-687, however, the applicant indicated that from August 1981 to March 1984, he had resided at [REDACTED]. He does not indicate ever having resided at [REDACTED].

These discrepancies cast considerable doubts on whether the affidavits submitted to establish the applicant's continuous unlawful residence are genuine, and whether the content of the applicant's Form I-687 application is accurate. The complete lack of reliable evidence casts doubt on whether the applicant has resided in the United States since 1981, as he claims. 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). The applicant has failed to submit any objective evidence to explain or justify the discrepancies in his application and in the record. Therefore, the reliability of the remaining evidence offered by the applicant is suspect and it must be concluded that the applicant has failed to establish that he continuously resided in the United States in an unlawful status during the requisite period.

As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the applicant's reliance upon documents with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982, through May 4, 1988.

Based on the foregoing analysis of the evidence, the AAO concludes that the applicant has failed to establish his continuous unlawful residence in the United States throughout the requisite period. Thus, the record does not establish that the applicant entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from that date through the date he attempted to file a Form I-687 during the original one-year application period that ended on May 4, 1988. Accordingly, the applicant is ineligible for temporary resident status under section 245A(a)(2) the Act.

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