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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

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[REDACTED]

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Date: **JAN 20 2012**

Office: HOUSTON

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. 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 director of the Houston office terminated the temporary resident status of the applicant, pursuant to the terms of the CSS/Newman Settlement Agreements, finding the applicant to be ineligible for temporary resident status based on a lack of documentation and inconsistent documentation in the record of proceedings. The appeal will be sustained.

On appeal, counsel for the applicant asserts that the evidence which the applicant previously submitted establishes by a preponderance of the evidence that he continuously resided in the United States in an unlawful status throughout the requisite period. On appeal counsel has submitted an additional affidavit from the applicant. The AAO has considered counsel's assertions, 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

The temporary resident status of an alien may be terminated upon the determination that the alien was ineligible for temporary residence. Section 245A(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1255a(b)(2)(A), and 8 C.F.R. § 245a.2(u)(i).

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)(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 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).

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).

sufficient basis for reliable knowledge about the applicant's residence in the United States during the requisite period.

The applicant has also submitted copies of two student identification cards dated the fall and summer of 1979, respectively, from [REDACTED]. The record also contains copies of five photographs of the applicant in the United States in 1979, and copies of two photographs of him in the United States in 1981.² The AAO finds that the applicant has met his burden of proof to establish his continuance residence in the United States in 1979, and presence in the United States for some part of 1981.

The remaining evidence in the record is comprised of copies of the applicant's statements, the I-687 application, and a Form I-698, application to adjust status from temporary to permanent resident.³

On November 23, 2010, the director of the Houston office issued a notice of intent to terminate (NOIT) the applicant's temporary residence. In the NOIT, the director stated that witness [REDACTED] was contacted by an officer of U.S. Citizenship and Immigration Services (USCIS), in an effort to verify the information contained in his December 7, 2005 affidavit. The NOIT stated that [REDACTED] first told the USCIS officer that he did not know the applicant, then retracted that statement and, while acknowledging that he knew the applicant, refused to approximate how long he has known the applicant. In rebuttal to the NOIT, the applicant submitted two affidavits from [REDACTED] both dated December 13, 2010. In one of the affidavits, the witness asserted that his August 31, 2010, telephonic testimony to a female USCIS officer was mischaracterized. The witness strongly asserts that he never denied that he knew the applicant. In addition, the witness strongly asserts that he was never requested to approximate how long he has known the applicant. Instead, the witness asserts that he was asked to state exactly what year he met the applicant, to which he replied that he could not remember the specific year, but that he had known the applicant for at least 30 years.

The AAO finds that the applicant has resolved, with independent objective evidence, the inconsistency in the record that formed the basis of the termination of the applicant's temporary resident status. In addition, the AAO finds that the witness statements submitted by the applicant appear to be credible and amenable to verification in that they include contact telephone numbers and/or contact addresses.

The applicant gave testimony that was consistent with the information in the record when he testified that he entered the United States in 1979, and continued to reside and work in the United States for the duration of the requisite statutory period.

² The applicant also submitted copies of 15 additional photographs. However, since the photographs are not of the applicant, are undated, or are of locations that cannot be identified, they are not evidence in support of the applicant's continuance residence in the United States and will be given no weight.

³ The applicant's I-698 application was denied, based upon the termination of the applicant's temporary resident status.

The director has not established that the information in the many supporting documents in the record was inconsistent with the applicant's testimony or with the claims made on his I-687 application. In addition, the director has not established that any inconsistencies exist *within* the claims made in the supporting documents, or that the documents contain false information. As stated in *Matter of E-M-*, 20 I&N Dec. at 80, when something is to be established by a preponderance of the evidence, the proof submitted by the applicant has to establish only that the asserted claim is probably true. That decision also states that, under the preponderance of evidence standard, an application may be granted even though some doubt remains regarding the evidence. *Id.* at 79. The documents that have been furnished in this case may be accorded substantial evidentiary weight and are sufficient to meet the applicant's burden of proof of residence in the United States for the requisite period.

The applicant has established by a preponderance of the evidence that he entered the United States before January 1, 1982 and maintained continuous, unlawful residence for the duration of the requisite period. In addition, the applicant has resolved, with independent objective evidence, the inconsistencies in the record that formed the basis of the termination of the applicant's temporary resident status. Consequently, the applicant has overcome the basis for the termination of his temporary resident status.

Therefore, the appeal must be sustained. The matter will be returned for the director to reopen the application for adjustment from temporary to permanent resident status.

ORDER: The appeal is sustained.