

**Identifying data deleted to
prevent clear, unwarranted
invasion of personal privacy**

PUBLIC COPY

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

L1

FILE:

MSC 04 286 12149
MSC 08 302 11269-APPEAL

Office: LOS ANGELES

Date: FEB 02 2010

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:

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.

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: On July 14, 2004, the applicant filed his Form I-687, Application for Status as a Temporary Resident Under Section 245A of the Immigration and Nationality Act, and a Form I-687 Supplement, CSS/Newman (LULAC) Class Membership Worksheet, which was approved on December 28, 2005. On June 25, 2008, the applicant's temporary resident status was terminated by the Director, Los Angeles. The decision to terminate is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The status of an alien lawfully admitted for temporary residence may be terminated at any time in accordance with section 245A(b)(2) of the Act if it is determined that the alien was ineligible for temporary residence under section 245A of the Act. 8 C.F.R. § 245a.2(u)(1)(i). Termination of the status of any alien previously adjusted to lawful temporary residence shall act to return such alien to the unlawful status held prior to the adjustment, and render him or her amenable to exclusion or deportation proceedings under section 236 or 242 of the Act, as appropriate. 8 C.F.R. § 245a.2(u)(4).

The director terminated the approval of applicant's temporary resident status because he did not establish that he continuously resided in the United States for the duration of the requisite period.

On appeal, the applicant states that the settlement agreements require that his application be read carefully and be understood with an open mind and body combined. The applicant further states:

Looking at the Notice of termination, one can realize that the only purpose of the interview is to disqualify and not to deliver, because despite the court order of good faith approach to the matter, it appears there is still no recognition of the approved settlement agreement as predicted. The opposing entity of before is still present, because there is no sense of transformation of the way of thinking, and there is no notion of the order of good faith, and for that matter prima facie. The agents in charge seem to be critical of the perception and are disregarding it all together. It is indicative; therefore the distribution of the settlement agreement cannot be possible.

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).

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. 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). 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).

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 request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, to deny the application.

The AAO notes the following inconsistencies:

- On his Form I-687 signed on October 1, 1987, the applicant stated that he had two children born in Guatemala, a son born on August 25, 1983 and a daughter born on September 8, 1986. On January 28, 2008, the director sent the applicant a Form I-72, Notice of Request for Additional Information, requesting, in part, that he submit the birth certificates of all of his children. The applicant submitted birth certificates for some or all of his other children, but did not submit birth certificates for the two children born in Guatemala in 1983 and 1986. Absent evidence to the contrary, the applicant was probably residing abroad prior to the conception of his son and daughter who was born on August 25, 1983 and September 8, 1986 in Guatemala. It is noted that the applicant’s residence abroad may have been reflected on these two birth certificates.
- In the January 28, 2008 Form I-72, the director also requested that the applicant provide an Internal Revenue Service (IRS) printout verifying that he had actually filed tax returns for 1981 through 1988. The applicant did not provide the requested information from the IRS and the record does not reflect that he even attempted to obtain this evidence. This verification of tax information by the IRS directly was requested from the applicant because the tax information that he submitted in support of his application is suspect and needed to be verified by the IRS before it could be accepted on its face value.
- On his Form I-687, the applicant stated he began working in the United States in February 1981. However, the record contains a letter from the Fresno, California, office of the IRS dated April 22, 1981 addressed to the applicant in North Hollywood, California. The letter stated that based

on the information he had provided to the IRS, "We are issuing your refund, but the information still does not agree with our records." This IRS letter is not credible evidence because by April 22, 1981, even judging by the applicant's claimed employment, he would have worked for less than three months in the United States and would not have been entitled to any conceivable refund as no funds would have accumulated in his IRS account.

- The applicant submitted a printout of his earnings history bearing a stamp indicating it was provided to him by the Van Nuys, California, SSA District Office on April 30, 2008. This document reports his earnings as \$2,552 for 1986. However, his IRS Form W-2, Wage and Tax Statement, for 1986 from [REDACTED] shows his social security wages from that employer for 1986 as \$11,086.89.

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. Further, the applicant must resolve any inconsistencies in the record with competent, independent, objective evidence. Attempts to explain or reconcile such inconsistencies, absent competent objective evidence sufficient to demonstrate where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). These inconsistencies cast doubt not only on the evidence containing the conflicts, but on all of the applicant's evidence and all of his assertions.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate entry into the United States prior to January 1, 1982, and continuous residence during the requisite period. . The applicant's asserted employment and residential histories on his Form I-687 are accompanied by inconsistent evidence.

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 its amenability to verification. Given the absence of credible supporting documentation, the applicant has failed to meet his burden of proof and failed to establish continuous residence in an unlawful status in the United States during the requisite period. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act. The application was correctly denied on this basis, which has not been overcome on appeal. Consequently, the director's decision to deny the application is affirmed.

According to a final court disposition in the record, the applicant was convicted on April 6, 1999 under the name [REDACTED] of exhibiting a deadly weapon other than a firearm, a misdemeanor, by a Judge of the Municipal Court of Van Nuys Courthouse Judicial District of the County of Los Angeles, California. [REDACTED]. Additionally, The applicant's Federal Bureau of Investigation fingerprint results report shows that on March 17, 1999, he was arrested by the Los Angeles Police Department in California under the name [REDACTED] and charged with "F PREVENT DISSUADE WIT BY FORCE." However, the final court disposition of this arrest is not included in the record of proceeding.

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