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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
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U.S. Citizenship  
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FILE: [REDACTED]  
MSC-05-036-10535

Office: LOS ANGELES

Date: FEB 23 2010

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:



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.

*Elizabeth McCormack*

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Los Angeles Director terminated the applicant's temporary resident status. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant submitted a Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (Act). The Form I-687 was approved. Subsequently the applicant filed a Form I-698, Application to Adjust from Temporary to Permanent Residence. The director determined that the applicant had not established by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status since prior to January 1, 1982, and for the duration of the requisite period and issued a Notice of Intent to Terminate (NOIT). The director noted that in response to the NOIT, the applicant had failed to provide sufficient evidence to establish his residence in the United States throughout the requisite period. The director further noted that the applicant had failed to address the issue regarding his admitted absence from the United States from 1981 through 1984. The director terminated the applicant's temporary resident status, finding that the applicant had not met his burden of proof and that he was therefore not eligible to adjust to temporary resident status pursuant to Section 245A of the Act.

On appeal, counsel asserts that the director erred in terminating the application. Counsel also asserts that the applicant has submitted sufficient evidence and testimony to establish his continuous residence in the United States during the requisite period. The applicant requested a copy of the record of proceedings through the Freedom of Information Act (FOIA) and the request was satisfied on June 30, 2009 (NRC2008049679).

Section 245A(b)(2) of the Act states, in pertinent part:

*Termination of temporary residence.* – The [Secretary of Homeland Security] shall provide for termination of temporary resident status granted an alien under subsection (a) –

\* \* \*

(A) if it appears to the Attorney General that the alien was in fact not eligible for such status.

The corresponding regulation at 8 C.F.R. § 245a.2(u)(1)(i) further prescribes that 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 “[i]t is determined that the alien was ineligible for temporary residence under Section 245A of this Act[.]” The applicant bears the burden to 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).

The record in this case shows that the applicant was granted temporary resident status under section 245A(a)(1) of the Act. However, the applicant has failed to submit sufficient evidence to substantiate his claimed residence in the United States throughout the requisite period. The applicant does not submit evidence on appeal. Although counsel asserts that the applicant has submitted sufficient evidence to establish his residency in the United States during the requisite period, the assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988). Without more persuasive evidence to demonstrate the applicant's initial arrival in the United States and his continuous unlawful residence thereafter, his eligibility for temporary residence status cannot be established. The applicant has failed to overcome the director's basis for termination. Accordingly, the appeal will be dismissed.

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