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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**

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FILE: [REDACTED]
MSC-04-274-10460

Office: NEWARK

Date: **JAN 25 2010**

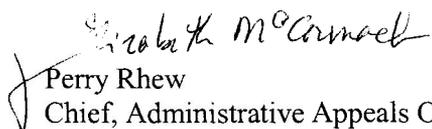
IN RE: Applicant: [REDACTED]

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:
[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 Newark 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. The director noted that in response to the Notice of Intent to Terminate, 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 State Tax Assessor's Office in Warrenburg, New York indicated that the parcel of land allegedly owned by the applicant in that city, was not recorded in his name in 1982 or 1983, that property taxes were not paid in 1983, that for 1984 the ownership of the property was listed in the name of [REDACTED] in care of [REDACTED], and that the tax bill for 1984 was sent to the applicant's address in Canada. 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 applicant has submitted sufficient evidence to establish his continuous residence in the United States during the requisite period. He also asserts that because the property tax assessment was sent to the applicant's address in Canada is not proof that he was living there.

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 applicant submitted the following evidence on appeal:

- A statement from [REDACTED] who states that the applicant is married to her sister and that his family came to the United States at the end of 1980 to help her with her children. She also stated that the applicant's family resided with her at [REDACTED] in Somerset, New Jersey until September 1982.
- A statement from [REDACTED] who stated that he has known the applicant since 1976 when they worked together in Toronto, Canada. He further states that the applicant and his wife moved to the United States from Canada at the end of 1981 to live with the applicant's wife's sister. This statement is inconsistent with the statement made by [REDACTED] who states that the applicant and his wife came to the United States at the end of 1980. It is also inconsistent and contrary to the applicant's statements that he entered the United States in November 1980.
- A statement from [REDACTED] who states that he has known the applicant since May 1981. The declarant fails to specify the applicant's place of residence.
- A statement from [REDACTED] who stated that he has known the applicant since 1979, and that between 1980 and 1982 he discovered that the applicant was living with his sister-in-law's family in Somerset, New Jersey. The declarant fails to specify where and under what conditions he met the applicant.
- An affidavit from [REDACTED] who states that he has known the applicant since November 1980 while living in New Jersey. He also states that he served as the applicant's real estate agent and, in September 1982, was able to assist the applicant in purchasing the [REDACTED] in Warrensburg, New York. This statement is inconsistent with [REDACTED] who states that the applicant came to the United States from Canada at the end of 1981.

These declarations fail to establish the applicant's continuous unlawful residence in the United States for the duration of the requisite period. Statements made by the declarants' are inconsistent and contradictory. The inconsistencies and contradictions cast doubt on the applicant's proof. 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). As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality; 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.

None of the witness statements provide concrete information, specific to the applicant and generated by the asserted associations with him, which would reflect and corroborate the extent of those associations and demonstrate that they were a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the affidavits. To be considered probative and credible, witness statements must do more than simply state that he or she knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. It is noted that the applicant submitted as evidence a copy of his hospital card that was submitted at the hospital in Canada during one of his visits which lists his address as [REDACTED] in Toronto, Canada. Upon review, the AAO finds that, individually and collectively, the witness statements do not indicate that their assertions are probably true. Therefore, they have little probative value.

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. In response to the Notice of Intent to Terminate and as evidence on appeal, the applicant submitted statements and declarations that are inconsistent with statements he made and that are contradictory to one another. This evidence is of little probative value. Although the applicant was asked to submit income tax records, bank statements and/or social security earning statements to substantiate his claimed residence in the United States, he failed to do so. The evidence submitted on appeal does not overcome the basis for termination. The applicant has failed to submit independent documentation – such as hotel receipts, bank statements, income and property tax records, social security earning statements, and or utility bills – to support his claimed residence in the United States. It is noted that property ownership does not equate to residency within a particular state or country. 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.