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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  
and Immigration  
Services

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FILE:

MSC 05 130 10696

Office: LOS ANGELES

Date:

**JAN 28 2010**

IN RE: Applicant:

APPLICATION: Application for Temporary Resident Status under 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.

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

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The application for temporary resident status pursuant to the terms of the settlement agreements reached in *Catholic Social Services, Inc., et al. v. Ridge, et al.*, CIV. NO. S-86-1343-LKK (E.D. Cal) on January 23, 2004, and *Felicity Mary Newman, et al. v. United States Immigration and Citizenship Services, et al.*, CIV. NO. 87-4757-WDK (C.D. Cal) on February 17, 2004 (CSS/Newman Settlement Agreements), was approved on September 8, 2005. On April 15, 2009, the applicant's temporary resident status was terminated by the director in Los Angeles, California. That decision is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director terminated the applicant's temporary resident status on the ground that the evidence of record failed to establish his continuous residence in the United States in an unlawful status from before January 1, 1982 through the date of attempted filing during the original one-year application period for legalization that ended on May 4, 1988.

On appeal the applicant asserts that the director did not give due weight to the documentation in the record.

An applicant for temporary resident status under section 245A of the Immigration and Nationality Act (the Act) must establish his or her entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status from before January 1, 1982 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 his or her continuous physical presence 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)

For purposes of establishing residence and physical presence under the CSS/Newman Settlement Agreements, the term "until the date of filing" in the regulation at 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 from 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 regulation at 8 C.F.R. § 245a.2(u)(i) provides that "temporary resident status may be terminated [if] . . . [i]t is determined that the alien was ineligible for temporary residence under section 245A of this Act."

An applicant for temporary resident status has the burden to establish 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. See 8 C.F.R. § 245a.2(d)(5).

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.* 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 (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.

The regulations provide an illustrative list of documents – which includes affidavits and “any other relevant document” – that an applicant may submit as evidence of continuous residence in the United States during the requisite period under section 245A of the Act. *See* 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The applicant, a native of Mexico who claims to have lived in the United States since November 1981, filed his 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 February 7, 2005. The application was approved on September 8, 2005.

On February 3, 2009, the director issued a Notice of Intent to Terminate the applicant’s temporary resident status. The director cited various documentation in the record indicating that the applicant may not have entered the United States until 1988, which conflicted with his prior claim, reiterated at an interview on February 3, 2009,<sup>1</sup> that he first entered the United States in November 1981. The applicant was granted 30 days to submit additional evidence.

In response to the notice the applicant asserted that the director was applying too strict a standard of proof. The applicant requested that the director review the documentation already in the record.

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<sup>1</sup> This interview was conducted at the East Los Angeles Legalization Office in the course of the applicant’s attempt to adjust to permanent resident status. The applicant had filed a Form I-698, Application to Adjust Status from Temporary to Permanent Resident (Under Section 245A of the INA), on May 11, 2008. The application was administratively closed on May 8, 2009, following the termination of the applicant’s temporary resident status on April 15, 2009.

On April 15, 2009, the director issued a Notice of Termination, determining that the applicant was ineligible for temporary resident status. The director cited numerous conflicting statements by the applicant, in documents dating back to 1995, as to when he first entered the United States, ranging from 1985 to 1993. The director also cited some conflicting evidence regarding the applicant's residential addresses and employment during the 1980s.

The applicant filed a timely appeal (Form I-694), reiterating his contention that the director had not applied the correct burden of proof and submitting some documentation, most of which was already in the record.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The AAO agrees with the director that the record includes numerous statements by the applicant indicating that his initial entry into the United States was long after November 1981. On a Form G-325A, Biographic Information, dated September 19, 1995, the applicant specifically stated that he resided at an address in Mexico ( [REDACTED] ) until October 1985. The applicant also cited October 1985 as his date of entry into the United States on the Application for Suspension of Deportation (Form EOIR-40) he filed in 1995. Likewise, in his testimony before an Immigration Judge on September 14, 1995, the applicant indicated that he first entered the United States in 1985 (around October). Other statements by the applicant in conjunction with his EOIR-40, and a Request for Asylum (also in 1995), indicate that his initial entry into the United States could have been later – in 1988, 1990, or even 1993.

It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies will not suffice without competent evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92, (BIA 1988). No evidence has been submitted by the applicant to resolve the inconsistencies discussed above. Moreover, doubt cast on any aspect of the applicant's evidence also reflects on the reliability of the applicant's remaining evidence. *See id.*

Among the documents submitted by the applicant as evidence of his residence in the United States during the 1980s, only one bears a date before 1986 – a photocopied receipt from an import-export business in California, dated November 21, 1981. This document contains handwritten information identifying the applicant as the customer, but does not include an address or any other residential information about the applicant. Moreover, it contains no date stamp or other authenticating mark to demonstrate that it actually was written in 1981. Accordingly, the merchandise receipt is not credible evidence that the applicant was residing in the United States in November 1981.

Based on the applicant's inconsistent statements as to his initial date of entry into the United States, and the paucity of documentation dating before 1986, the AAO concludes that the applicant has failed to establish that he resided continuously 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 for legalization that ended on May 4, 1988. Accordingly, the applicant is ineligible for temporary resident status under section 245A of the Act.

The appeal will be dismissed. The director's decision to terminate the applicant's temporary resident status is affirmed.

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