

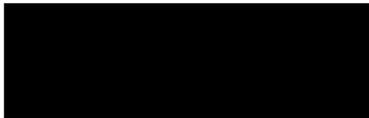
identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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

**PUBLIC COPY**



L,

FILE:



Office: FORT SMITH

Date:

OCT 08 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.

IN 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.

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The applicant's temporary resident status was terminated by the Director, Fort Smith, Arkansas. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director determined that the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that he attempted to file a Form I-687, Application for Status as a Temporary Resident, with the Immigration and Naturalization Service or the Service (now United States Citizenship and Immigration Services or USCIS) in the original legalization application period between May 5, 1987 to May 4, 1988. Therefore, the director concluded that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and section 245A of the Immigration and Nationality Act (Act) and terminated the applicant's temporary residence.

On appeal, the applicant reiterates his claim of residence in this country for the period in question and asserted that he submitted sufficient evidence to demonstrate such claim. The applicant claims that he never received the notice of intent to terminate because USCIS did not mail such notice by certified mail. The applicant included copies of previously submitted supporting documents with the appeal.

The status of an alien lawfully admitted for temporary residence may be terminated at any time if it determined that the alien was ineligible for temporary residence under section 245A of the Act. 8 C.F.R. § 245a.2(u)(1)(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).

For purposes of establishing residence and presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the alien attempted to file a completed Form I-687 application and fee or was caused not to timely file, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. See Paragraph 11, page 6 of the CSS Settlement Agreement and paragraph 11, page 10 of the Newman Settlement Agreement.

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).

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 including affidavits is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

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 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 (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 or petition.

The applicant submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to USCIS on December 13, 2005. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant listed [REDACTED] from 1981 to 1985, an unspecified address in Fort Worth, Texas from 1985 to 1986, an unspecified address in Greenfield, California from 1985 to 1988, and an unspecified address in Santa Maria, California from 1988 to 1991. The fact that the applicant listed only a [REDACTED], California, and unspecified addresses in [REDACTED] California as his residences in this country for the required period without providing specific street addresses and specific dates of residence tends to diminish the credibility of the his claim of residence in the United States for the requisite period. Further, the applicant failed to list any absences from this country during the period in question at part #32 of the Form I-687 application where applicants were asked to list all absences from the United States since January 1, 1982.

In support of his claim of continuous residence in this country since prior to January 1, 1982, the applicant submitted photocopied envelopes that are postmarked September 9, 1983, an

indeterminate day in March 1984, April 1, 1985, October 31, 1986, and November 12, 1986. While the applicant also included another photocopied envelope, the postmark date is not clearly discernible and appears to be after the expiration of the requisite period on May 4, 1988. The photocopied envelope postmarked September 9, 1983 lists the applicant's return address as [REDACTED]. [REDACTED] which does not correspond to the address, [REDACTED] that the applicant listed as his residence as of the date of the postmark at part #30 of the Form I-687 application. In addition, the photocopied envelopes postmarked an indeterminate day in March 1984 and April 1, 1985 both list the applicant's return address as [REDACTED], despite the fact that the applicant never claimed to have resided at this address in this locality at part #30 of Form I-687 application. Finally, although the applicant did not specify the street address where he resided in [REDACTED] Texas in 1985 and 1986, the photocopied envelopes postmarked October 31, 1986 and November 12, 1986 both list the applicant's return address as [REDACTED] Texas. The fact that the return addresses on these photocopied envelopes do not correspond to the applicant's listing of his addresses of residence during the period in question at part #30 of the Form I-687 application tends to impair the probative value of these documents.

The applicant provided an Employee Identification Card from [REDACTED] for 1983 and paycheck stub dated January 18, 1985. However, the probative value of these documents is limited as any information relating to the applicant on both documents is handwritten.

The applicant provided affidavits that are signed by [REDACTED] and [REDACTED] respectively. While both of the affiants attested to the applicant's residence for the requisite period, their testimony is general and vague and does not provide any specific and verifiable information to substantiate the applicant's claim of continuous residence in this country for the period in question.

Although not noted by the director the record contains a Form 157, Medical Examination of Applicants for United States Visas, from the United States Department of State, which reflects that the applicant was examined by a doctor in Mexico City, Mexico on April 20, 1988. The fact that the applicant underwent a medical examination on this date in Mexico lessens the credibility of his claim of residence in the United States for the requisite period as the applicant made no claim that he was absent from this country and in Mexico on April 20, 1988.

The record reflects that the applicant was granted temporary resident status on October 4, 2006. Subsequently upon review, the director determined that the supporting documents and testimony in the record contained in the record could not be considered as sufficient to corroborate applicant's claim of residence in this country for the requisite period. As a result, the director found that the applicant failed to establish that he continuously resided in this country in an unlawful status since prior to January 1, 1982. Therefore, the director concluded that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and section 245A of the Act and terminated the applicant's temporary resident status on November 3, 2009.

On appeal, the applicant claims that he never received the notice of intent to terminate because USCIS did not mail such notice by certified mail. Nevertheless, a review of the record reveals that the notice of intent to terminate was sent to the applicant at his most current address of record at the time of mailing on June 22, 2009. The record shows that the notice was returned by the United States Postal Service marked as "unclaimed." Consequently, the applicant's failure to receive the notice of intent to terminate must be considered to be of his own making and not due to any error attributable to USCIS.

The applicant's remarks on appeal regarding the sufficiency of evidence he submitted to demonstrate his residence in this country during the period in question have been considered. However, the supporting documents contained in the record do not contain specific and verifiable testimony to substantiate the applicant's claim of residence in the United States for the period in question. In addition, the record contains testimony and evidence that tend to conflict with critical elements of the applicant's claim of residence rather than corroborate such claim.

The absence of sufficiently detailed supporting documentation and the conflicting nature of evidence and testimony in the record impair the credibility of the applicant's claim of residence in this country for the period in question. Pursuant to 8 C.F.R. § 245a.2(d)(3), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. The applicant has failed to submit sufficient credible documentation to meet his burden of proof in establishing that she has resided in the United States since prior to January 1, 1982 by a preponderance of the evidence as required under both 8 C.F.R. § 245a.2(d)(3) and *Matter of E- M-*, 20 I&N Dec. 77 (Comm. 1989).

Under these circumstances, it cannot be concluded that the applicant has established that the claim of continuous residence for the entire requisite period is credible and probably true. Therefore, the applicant has not established eligibility for temporary residence under the terms of the CSS/Newman Settlement Agreements and section 245A of the Act. As the applicant has not overcome the grounds for termination of status, the appeal must be dismissed.

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