

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave. N.W., MS 2090
Washington, DC 20529 - 2090
**U.S. Citizenship
and Immigration
Services**



[REDACTED]

L1

FILE: [REDACTED]

Office: [REDACTED]

Date: **APR 05 2011**

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Adjustment from Temporary to Permanent Resident Status under 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.

Elizabeth McCormack

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application for adjustment from temporary to permanent resident status was denied by the Director, [REDACTED]. 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 Form I-698, Application to Adjust Status from Temporary to Permanent Resident. The director determined that the applicant did not establish by a preponderance of the evidence that he had entered and 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 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 from temporary resident status pursuant to Section 245A of the Act. The director subsequently denied the applicant's Form I-698 based upon the termination of his temporary resident status.

On appeal, counsel states that United States Citizenship and Immigration Services (USCIS) based its termination on erroneous facts and that the applicant lived in the United States prior to 1982 to the present date.

The regulation at 8 C.F.R. § 245a.2(u)(1)(i) 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 record in this case shows that the applicant was granted temporary resident status under section 245A(a)(1) of the Act. The director subsequently issued a Notice of Intent to Terminate (NOIT) the applicant's temporary residence. The director found that the applicant failed to provide sufficient evidence to establish that he entered the United States prior to January 1, 1982 and resided in a continuous unlawful status in the United States during the requisite period, and terminated the applicant's temporary residence.

On appeal, counsel submits copies of previously submitted affidavits and asserts that all of the applicant's affidavits are credible and verifiable. Counsel states that the NOIT was not received by applicant. However, the NOIT was mailed to the applicant's address of record and the record of proceeding does not contain evidence of the NOIT being returned as undeliverable by the postal service. Further, the NOIT contains a notation that a copy was sent to counsel's address of record. The director also indicates that the applicant was served with a copy of the NOIT at his interview on July 14, 2010.

The director's NOIT states that in several instances, the evidence contained in the record contradicts other evidence of record or the applicant's completed forms. The director's decision will not be repeated here. A few examples from the NOIT include the following from among 18 inconsistencies noted by the director:

1. Form I-485 and Form G-325A indicate the applicant was never married yet there is a marriage certificate establishing the applicant was married to [REDACTED] in [REDACTED] on July 12, 1981.
2. [REDACTED] states in his letter that the applicant worked at [REDACTED] from 1981 to 1984. The applicant claims on his Form I-687 that he worked at [REDACTED] from January 1984 to June 1988.
3. [REDACTED] states in his affidavit that he has known the applicant since April 1981 and that the applicant never left the United States. This statement contradicts the applicant's Forms I-687 and the applicant's marriage certificate.

The AAO notes that the applicant did not list his travel to [REDACTED] to get married on either of his Forms I-687. The applicant failed to address any of the inconsistencies noted in the director's decision even after his receipt of the NOIT by mail and hand delivery at the interview on July 14, 2010. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. No evidence of record resolves these inconsistencies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Upon review, counsel's assertions are not persuasive. The applicant provided several affidavits to establish his entry prior to January 1, 1982 and continuous unlawful residence during the requisite period. While an applicant's failure to provide evidence other than affidavits shall not be the sole basis for finding that he failed to meet the continuous residency requirements, an application which is lacking in contemporaneous documents cannot be deemed approvable if considerable periods of claimed continuous residency rely entirely on affidavits which are considerably lacking in certain basic and necessary information. The affiants statements are significantly lacking in detail and do not establish that the affiants actually had personal knowledge of the events and circumstances of the applicant's initial entry and residence in the United States. The affidavits do not provide much relevant information beyond acknowledging that they met the applicant in the 1980s. Overall, the affidavits provided are so deficient in detail that they can be given no significant probative value. Further, as stated in the NOIT, the affiants contradict themselves within their affidavits and contradict some of the information given by the applicant on his Forms I-687. The applicant has failed to provide probative and credible evidence of his entry and continuous residence in the United States during the requisite statutory period.

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). The applicant has been given the opportunity to satisfy his burden of proof. The AAO finds that the

applicant's temporary resident status was properly terminated pursuant to section 245A(b)(2) of the Act and the corresponding regulation at 8 C.F.R. § 245a.2(u)(1)(iv). That decision has not been appealed and is final. Accordingly, the director correctly denied the Form I-698 application to Adjust Status from Temporary to Permanent Resident. Thus, the appeal in this matter will be dismissed.

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