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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]

LI

FILE: [REDACTED]  
MSC-10-047-11810

Office: LOS ANGELES

Date: APR 06 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:

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.

*Elizabeth McCormack*

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The application for adjustment from temporary to permanent resident status was denied by the Director, Los Angeles. 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. Upon review, the director determined that the applicant had disrupted any period of continuous residence in the United States during the statutory period of January 1, 1982 to May 4, 1988 and had not shown emergent reasons for the length of absence and issued a Notice of Intent to Terminate (NOIT) the applicant's temporary resident status. The director terminated the applicant's temporary resident status, finding that the applicant had not met his burden of proof that he resided continuously in the United States during the requisite period, and that he was therefore not eligible to adjust from temporary to permanent 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, the applicant states that the evidence satisfies the burden of proving eligibility for legalization by a preponderance of the evidence.

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 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) 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) February 17, 2004 (CSS/Newman Settlement Agreements).

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 245(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 physical presence under the CSS/Newman Settlement Agreements, the term "until the date of filing" in 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 of May 5, 1987 to May 4, 1988. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

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 is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L). To meet his or her burden of proof, 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. 8 C.F.R. § 245a.2(d)(6).

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.* at 80. 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. 8 C.F.R. § 245a.2(d)(6). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

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, 431 (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. 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. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA).

An applicant shall be regarded as having resided continuously in the United States if, at the time of filing the application for temporary resident status, no single absence from the United States has exceeded 45 days, and the aggregate of all absences has not exceeded 180 days between January 1, 1982, through the date the application is filed, unless the alien can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the alien was maintaining residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.1(c)(1)(i).

Upon receipt of the Form I-698 in the instant case, the director found that during the applicant's interview for permanent residence, the applicant stated under oath that he entered the United States in 1980 and left the country in March 1982 for two months. In a written statement by the applicant in Spanish, he stated that he entered the United States in 1980 and left the country March 1982 and returned in November 1982. He also stated that he left in March 1987 and returned in March 1988.

The director issued a Notice of Intent to Terminate (NOIT) the applicant's temporary residence in the Form I-687 proceeding, MSC 05 357 11227. The director found that the applicant had disrupted any period of continuous residence in the United States during the statutory period of January 1, 1982 to May 4, 1988 and had not shown emergent reasons for the length of absence and terminated the applicant's temporary residence.

The applicant's explanation for the statements is that he was nervous during the interview and misspoke when answering the interviewing officer's questions. The applicant provided copies of check stubs and Forms W-2 for the years 1987 and 1988 that establish he was employed by Tomo Auto Products, Los Angeles, Ca., and that he was in the United States during the years 1987 and 1988. The applicant contends on appeal that he previously submitted affidavits in support of his continuous residence in the United States during the requisite statutory period. The applicant states that USCIS is disregarding the relevance of these affidavits. However, the applicant's statements of record contradict the affidavits. The applicant stated twice that he was absent from the United States for over 60 days, once in writing and the second time at an interview.<sup>1</sup> The affidavits do not provide sufficient detail to overcome the applicant's inconsistent statements.

The applicant concedes that proof of his residence in the United States from 1981 to 1988 is based solely on affidavits. The applicant states that the director's decision suggests that affidavits

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<sup>1</sup> On the Form I-687, the applicant claims that he went to visit family in Mexico in February 1988 and returned in February 1988. There are no other absences listed on the applicant's Form I-687 during the requisite period.

alone are not sufficient to meet the evidentiary burden and overcome the misstatements by the applicant during his interview. However, 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). The interviewing officer's notes reveal that the applicant left the United States in 1982, around March, for two months. By his own admission, the applicant states in writing that he resided outside the United States from March 1982 to November 1982. No explanation and evidence has been provided with the Form I-687 application to show that the applicant's absences from and delayed reentries into the United States were due to emergent reasons. Therefore, the applicant has disrupted any period of continuous residence in the United States during the statutory period of January 1, 1982 to May 4, 1988.

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 or which do not resolve the inconsistencies of record. 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 and/or worked with the applicant in the 1980s. Overall, the affidavits provided are deficient in detail, and do not overcome the applicant's contradictory testimony. 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). 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.