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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**



**PUBLIC COPY**

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Date: **DEC 28 2011**

Office: HOUSTON

FILE:



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

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.

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The applicant's status as a temporary resident was terminated by the Director, Houston, Texas. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant was granted temporary resident status on September 15, 2007 under section 245A of the Immigration and Nationality Act (Act), as amended, 8 U.S.C. § 1255a. However, the regulation at 8 C.F.R. § 245a.2(b)(1) states in pertinent part, "the temporary resident status may be terminated [if] it is determined that the alien was ineligible for temporary residence under section 245A of this Act."

On August 25, 2010, the director issued a Notice of Intent to Terminate (NOIT) the applicant's temporary resident status. The NOIT indicated that the information regarding residence provided by the applicant was incomplete and inconsistent. Specifically, the director noted that the applicant indicated on two Form I-687 applications that he was absent from the United States from May 1984 until June 1985 for a total of 13 months. The director noted that this absence rendered the applicant ineligible for temporary resident status. The director provided the applicant with an opportunity to address insufficiencies in the evidence. The applicant failed to overcome the reasons stated in the NOIT and, therefore, the director terminated the applicant's temporary residence on October 29, 2010. The applicant filed a timely appeal.

On appeal, the applicant indicates that United States Citizenship and Immigration Services (USCIS) erred in terminating his temporary resident status and he indicates that the dates listed on his applications were clerical errors.

Section 245A(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255a(b)(2) states in pertinent part that the Act provides for termination of temporary residence status granted to an alien if it appears to the Attorney General [now Secretary, Department of Homeland Security] that the alien was in fact not eligible for such status, or the alien commits an act that makes the alien inadmissible to the United States as an immigrant, or the alien is convicted of any felony or three or more misdemeanors committed in the United States. *See also* 8 C.F.R. § 245a.4(b)(20)(i)(A).

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Following *de novo* review, the AAO finds that the applicant has failed to establish his continuous residence in the United States from January 1, 1982 through the end of the relevant period.

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).

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). 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).

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).

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.

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.

The issue in this proceeding is whether the applicant has established that he (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. In support of his eligibility, the applicant initially submitted written statements from [REDACTED]

[REDACTED] While the declarants indicate that they knew the applicant during the relevant period, their statements lack sufficient detail to be considered credible. For example, the letters provide few details regarding the circumstances of the applicant's residence in the United States or of the claimed relationship of over 20 years. Furthermore, the declarants do not indicate how they date their acquaintance with the applicant or how the declarant has direct personal knowledge of the applicant's residence in the United States during the relevant period.

The record also contains three letters attesting to the applicant's employment during the relevant period. [REDACTED] indicates that the applicant worked for him at [REDACTED] from December 1981 until December 1982. He further indicates that the applicant worked for him at [REDACTED] from January 1983 until November 1986. [REDACTED] indicates that the applicant worked for him at [REDACTED] from February 1987 until March 1989. He indicates that the information he provides is taken from official company records which

are available. Finally, [REDACTED] indicates that the applicant was employed by [REDACTED] Texas beginning in 1987.

The statements fail to meet certain regulatory standards set forth at 8 C.F.R. § 245a.2(d)(3)(i), which provides that letters from employers must include the applicant's address at the time of employment; exact period of employment; whether the information was taken from official company records and where records are located and whether USCIS may have access to the records; if records are unavailable, an affidavit form-letter stating that the employment records are unavailable may be accepted which shall be signed, attested to by the employer under penalty of perjury and shall state the employer's willingness to come forward and give testimony if requested. While the statement from [REDACTED] does include some of the required information, the applicant's employment did not commence until 1987, so this letter is only probative evidence of the applicant's residence in 1987 and the beginning of 1988.

Overall, the statements noted do not include much of the required information and can be afforded minimal weight as evidence of the applicant's residence in the United States for the duration of the requisite period.

As noted by the director in the Notice of Intent to Terminate (NOIT) the record contains inconsistent information regarding the applicant's absences from the United States. On his current Form I-687, the applicant indicates that he was absent from the United States from May 1984 until June 1985. This absence is also listed on his prior Form I-687 submitted by the applicant in 1991. During his interview with USCIS on August 19, 2010, the applicant affirmed the dates of his absence.

The applicant shall be regarded as having resided continuously in the United States if at the time the application for temporary resident status is considered filed, as described above pursuant to the CSS/Newman Settlement Agreements, no single absence from the United States has exceeded 45 days, and the aggregate of all absences has not exceeded 180 days during the requisite period unless the applicant can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the applicant was maintaining a residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.2(h).

If the applicant's absence exceeded the 45-day period allowed for a single absence, it must be determined if the untimely return of the applicant to the United States was due to an "emergent reason." Although this term is not defined in the regulations, *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), holds that "emergent" means "coming unexpectedly into being."

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 applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92. The director informed the applicant in the NOIT that his absence rendered him ineligible for temporary resident status. He was provided an opportunity to address this grounds of denial.

In response to the NOIT, the applicant submitted written statements from [REDACTED] [REDACTED] indicates that she knows that the applicant

was present in the United States during the period in question because the applicant would frequently visit her at her place of employment in 1984 asking for work. [REDACTED] indicates that he knows that the applicant was in the United States from August 1984 until November 1984 because the applicant would work at his furniture store, [REDACTED] on weekends during this period. The applicant does not list this employment on either Form I-687. The remaining declarant's provide few details regarding their relationship with the applicant and they do not indicate the basis of their knowledge of his residence during the period in question.

On appeal, the applicant has not provided independent objective evidence which resolves this material inconsistency. He merely submits copies of the same written statements submitted in response to the NOIT. Therefore, the AAO agrees with the director that the applicant's absence renders him ineligible for temporary resident status. Furthermore, the AAO notes that the applicant indicates on his Form I-687 that his son, [REDACTED] was born in Mexico on February 2, 1985. This casts further doubt on the reliability of the applicant's testimony.

Finally, the AAO notes that the applicant has been convicted of two misdemeanors. On April 7, 1999, the applicant was convicted in [REDACTED] Texas of *driving with a suspended license*, a misdemeanor. (Case no. [REDACTED]) On May 12, 1997, the applicant also pled guilty in Harris County Court to *driving while intoxicated*, a misdemeanor. (Case no. [REDACTED]) Two misdemeanor convictions do not render an applicant ineligible for temporary resident status.

Therefore, based upon the foregoing, the applicant is ineligible for temporary residence because he failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and continuously resided in an unlawful status in the United States for the requisite period as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M--*, *supra*. Any temporary resident status previously granted to the applicant is terminated.

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