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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

[Redacted]

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DATE: JUL 11 2011 Office: LOS ANGELES

FILE: [Redacted]

IN RE: Applicant: [Redacted]

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:
[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.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The applicant was granted temporary resident status under section 245A of the Immigration and Nationality Act (Act) on December 17, 1988. The record reflects that the director terminated the applicant's temporary resident status on October 23, 1992, finding the applicant had failed to submit a Form I-693, Medical Examination of Aliens seeking Adjustment of Status. On August 26, 1994, the Administrative Appeals Office (AAO) dismissed the appeal of the applicant's termination of temporary resident status.

On May 20, 2009, the applicant filed a motion to reopen or reconsider as a class member under the *Northwest Immigrant Rights Project, et al. vs. U.S. Citizenship and Immigration Services, et al.*, 88-CV-00379 JLR (W.D. Was.) (NWIRP). On August 4, 2009, the director approved the motion and withdrew its decision to terminate the applicant's temporary resident status. On July 30, 2010, the director denied the application and determined that the applicant was inadmissible as he is likely to become a public charge. The matter is now before the AAO on appeal. The appeal will be dismissed.

The AAO affirms the director's determination finding the applicant failed to establish his eligibility for temporary resident status pursuant to Section 245A of the Immigration and Nationality Act (Act).

The director determined that the applicant was inadmissible because he was likely to become a public charge pursuant to section 212(a)(4)(A) of the Act, 8 U.S.C. § 1182(a)(4)(A). The applicant states that the public charge provisions do not apply in this case, as the applicant has worked 40 qualifying quarters of coverage as defined under Title II of the Social Security Act, 42 U.S.C. 401 *et seq.*, citing 8 C.F.R. § 213a.2(a)(2)(ii)(C). The cited regulation applies to situations in which an intending immigrant seeks an immigrant visa, admission as an immigrant, or adjustment of status as an immediate relative, family-based immigrant under section 203(a) of the Act, or employment-based immigrant under section 203(b) of the Act, and does not apply to the application for temporary residence under review. *See*, 8 C.F.R. § 213a.2(a)(2)(i). Thus, whether the applicant has worked 40 quarters under Title II of the Security Act is not relevant.

An applicant for temporary resident status must establish that he is admissible to the United States as an immigrant. Section 245A(a)(4)(A) of the Act, 8 U.S.C. § 1255a(a)(4)(A). Section 212(a)(4) of the Act states in pertinent part that any alien who: "is likely at any time to become a public charge is inadmissible."

The regulation at 8 C.F.R. § 245a.2(d)(4) provides:

Proof of financial responsibility. An applicant for adjustment of status . . . is subject to the provisions of section 212(a)(15) of the Act relating to [inadmissibility] of aliens likely to become public charges. Generally, the evidence of employment submitted by an applicant pursuant to 8 C.F.R. § 245a.2(d)(3)(i) will serve to demonstrate the applicant's financial responsibility during the documented period(s) of employment. If the applicant's period(s) of residence in the United States include significant gaps in employment or if there is reason to believe that the alien may have received public assistance while employed, the applicant may be required to provide proof that he or she has not received public

cash assistance. Pursuant to 8 C.F.R. § 245a.2(d)(4), the burden of proof to demonstrate the inapplicability of the ground of inadmissibility arising under section 212(a)(4) of the Act lies with the applicant who may provide:

- (i) Evidence of a history of employment (i.e., employment letter, W - 2 Forms, income tax returns, etc.);
- (ii) Evidence that he/she is self-supporting (i.e., bank statements, stocks, other assets, etc.); or
- (iii) Form I - 134, Affidavit of Support, completed by a spouse in behalf of the applicant and/or children of the applicant or a parent in behalf of children which guarantees complete or partial financial support. Acceptance of the affidavit of support shall be extended to other family members where family circumstances warrant.

To evaluate whether an applicant for temporary resident status is likely to become a public charge, the USCIS applies the special rule for determination of public charge. 8 C.F.R. § 245a.2(k)(4). Under the special rule, an alien who has a consistent employment history and shows the ability to support himself even though his income may be below the poverty level is not inadmissible as a public charge. 8 C.F.R. § 245a.3(k)(4). The alien's employment history should be continuous in the sense that the alien shall be regularly attached to the workforce, has an income over a substantial period of the applicable time, and has demonstrated the capacity to exist on his or her income without recourse to public cash assistance. 8 C.F.R. § 245a.3(g)(4)(iii).

On May 4, 2011, the AAO issued a notice of intent to deny (NOID) informing the applicant of the deficiencies in the record and providing him with an opportunity to respond. The applicant submitted some of the evidence requested, but he indicated that he was unable to obtain a signed Form I-134, Affidavit of Support, and that the Form I-864, Affidavit of Support Under Section 213A of the Act previously submitted should be sufficient. As noted above, pursuant to 8 C.F.R. § 245a.2(d)(4), the Form I-134 should be completed by a spouse, child, parent or other family member of the applicant. The Form I-864 was completed by Mr. [REDACTED] and there is no evidence in the record of proceeding that he is the applicant's family member.

There is a waiver of this ground of inadmissibility,¹ but no purpose would be served by filing an application for a waiver, as the applicant has failed to establish his continuous residence throughout the requisite period.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683

¹ The Attorney General [now Secretary, Department of Homeland Security] may waive such inadmissibility in the case of individual aliens for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest. Section 245A(d)(2)(B)(i) of the Act, 8 U.S.C. § 1255a(d)(2)(B)(i). 8 C.F.R. § 245a.2(k)(2).

(9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

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).

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.

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).

The applicant has the burden of proving by a preponderance of the evidence that he has resided in the United States for the requisite period. 8 C.F.R. § 245a.2(d)(5). To meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. 8 C.F.R. § 245a.2(d)(6). The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that an applicant may submit to establish proof of continuous residence in the United States during the requisite period. This list includes: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts or letters.

An issue in this proceeding is whether the applicant established he: (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status throughout the requisite period. The documentation that the applicant submits in support of his claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists of several affidavits and letters; a copy of the applicant's California drivers license issued in 1988, bank letters, and a statement from the Social Security Administration.

Some of the evidence submitted indicates that the applicant resided in the United States in 1979 and after May 4, 1988; however, because evidence of residence after May 4, 1988 is not probative of residence during the requisite time period, it shall not be discussed

The applicant submitted statements from [REDACTED]

Although the declarants state that they have known the applicant for all or a part of the requisite period, the statements do not supply enough details to lend credibility to their assertions. For instance, the declarants do not indicate how they date their initial meeting with the applicant, how frequently they had contact with the applicant, or how they had personal knowledge of the applicant's presence in the United States. Given these deficiencies, these statements have minimal probative value in supporting the applicant's claims that she entered the United States prior to January 1, 1982 and resided in the United States for the entire requisite period.

The record of proceeding also contains a letter from the Hotel Employee and Restaurant Employees Union. The regulation at 8 C.F.R. § 245a.2(d)(3)(v) provides requirements for attestations made on behalf of an applicant by churches, unions, or other organizations. Attestations must: (1) identify applicant by name; (2) be signed by an official (whose title is shown); (3) show inclusive dates of membership; (4) state the address where applicant resided during membership period; (5) include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; (6) establish how the author knows the applicant; and (7) establish the origin of the information being attested to.

The letter from the Hotel Employee and Restaurant Employees Union does not comply with the above cited regulation because it does not state the address where the applicant resided during his membership period; establish in detail that the author knows the applicant and has personal knowledge of the applicant's whereabouts during the requisite period; establish the origin of the information being attested to; and indicate that membership records were referenced or otherwise specifically state the origin of the information being attested to. For this reason, the letter is deemed to be of little evidentiary value.

The applicant submitted letters from four different employers. The signatures on several letters are illegible and will be given no weight. The letter from the Los Angeles Hilton is deficient in that it fails to provide the applicant's address at the time of employment, to indicate whether the information was taken from official company records, where records are located and whether the Service may have access to the records, as required by the regulation at 8 C.F.R. § 245a.2(d)(3)(i).

Therefore, based upon the foregoing, the applicant has 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*. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

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