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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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[REDACTED]

FILE:

[REDACTED]

Office: LOS ANGELES

Date:

MAR 30 2011

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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

Perry Rhew
Chief, Administrative Appeals Office

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

The applicant was granted temporary resident status 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 March 18, 2010, the director issued a Notice of Intent to Terminate (NOIT) the applicant's temporary resident status. The director provided the applicant with an opportunity to address insufficiencies in the evidence. The director noted that the applicant had been absent from the United States for over 45 days and had failed to establish that his return had been delayed due to an emergent reason. The director also noted that the applicant submitted a written statement that he was absent from the United States for more than an aggregate of 180 days. The applicant failed to overcome the reasons stated in the NOIT and, therefore, the director terminated the applicant's temporary residence. The applicant filed a timely appeal.

On appeal, counsel for the applicant asserts that the applicant's absences were prolonged due to emergent reasons, and therefore, did not interrupt his continuous residence.

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 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 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."

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 the applicant's own testimony. 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, "[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 applicant 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 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 claimed on his I-687 Application that he entered the United States in 1979 and that he has resided in the United States since that time. At part #32 of the I-687 Application, which requires applicants to list all absences from the United States, the applicant indicates that he visited family in Mexico on the following dates:

- May to June 1981
- June 1983

- August 1983
- September 1983
- December 1983
- February 1984 and May 1988 until November 2000

On June 28, 2006, the director denied the application noting that the applicant testified that he has four children born in Mexico and that two of the children were born during the relevant period. The director also noted that the childrens' birth certificates indicate that the applicant was present in Mexico to register their births on [REDACTED] and September 11, 1985. The director noted that this conflicts with the dates of his absences provided by the applicant on his Form I-687.

The director's decision was vacated on other grounds on May 22, 2007 and the applicant was provided an opportunity to respond to the inconsistencies regarding his absences during the relevant period. On July 23, 2007, the applicant submitted a written statement in which he listed his absences from the United States during the relevant period. He indicated the following absences:

- January 15, 1982 until March 30, 1982 for a total of 75 days
- June 1983 for 10 days
- June 1983 for 2 days
- August 1983 for 3 days
- September 1983 for 5 days
- December 1983 for 10 days
- February 1984 for 3 days
- February 1984 for 1 day
- July 15, 1985 until September 15, 1985 for 60 days
- December 15, 1986 until January 2, 1987 for 14 days
- July 17, 1987 until July 30, 1987 for 14 days

As noted by the director, the applicant's testimony indicates that he was absent from the United States for a total of 197 days making him ineligible for temporary resident status pursuant to 8 C.F.R. § 245a.2(h). Furthermore, the applicant testified that he was absent on two occasions for more than 45 days, January 15, 1982 until March 30, 1982 and July 15, 1985 until September 15, 1985. Each of these absences constitutes a break in continuous residency and renders the applicant ineligible for temporary resident status unless the untimely return of the applicant to the United States was due to an "emergent reason."

On appeal, the applicant asserts that his return to the United States was delayed in both instances due to an emergent reason. First, he asserts that he was absent from the United States in January 1982 until March 1982 due to the birth of his daughter. He indicates that his daughter was born [REDACTED] and became ill. He does not submit any evidence of his daughter's illness beyond his own statement. As noted above, to meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony, and in this case he has failed to do so.

The applicant indicates that his return from his second absence of more than 45 days, from July 15, 1982 until September 15, 1985 was delayed because the clinic where his son was born refused to list him on the child's birth certificate and he was required to wait 40 days in order to list himself as the father of the child. Again, he provides no evidence other than his testimony.

Continuous unlawful residence is broken if an absence from the United States is more than 45 days on any one trip unless return could not be accomplished due to emergent reasons. 8 C.F.R. § 245a.2(h)(1)(i). "Emergent reasons" has been defined as "coming unexpectedly into being." *Matter of C*, 19 I&N Dec. 808 (Comm. 1988). In this case, the applicant has failed to establish that his return, on either occasion, could not be accomplished due to an emergent reason.

The applicant's admitted absences constitute breaks in any period of continuous residence he may have established. As he has not provided any evidence other than his own attestations that explain the "emergent reason" for his failure to return to the United States in a timely manner, he has failed to establish by a preponderance of the evidence that he has 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. Furthermore, the applicant has not addressed the fact that his absence total more than 180 days during the relevant period. See 8 C.F.R. § 245a.2(h), or the inconsistencies between his Form I-687 and his later testimony.

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.