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U.S. Citizenship and Immigration Services  
*Office of Administrative Appeals (AAO)*  
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**U.S. Citizenship  
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Services**



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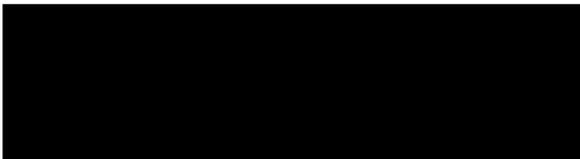
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DATE: **MAY 02 2011** Office: LOS ANGELES FILE: 

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 filed a Form I-687, Application for Status as a Temporary Resident. The director, Los Angeles, terminated the applicant's temporary resident status. The applicant filed a timely appeal. The Administrative Appeals Office (AAO) issued a Notice of Intent to Deny (NOID) on February 23, 2011 withdrawing the director's grounds for termination and requesting further information regarding the applicant's continuous residence in the United States during the relevant period. The applicant was afforded 21 days to respond to the NOID. The applicant submitted a timely response, however, the evidence submitted is insufficient to overcome the insufficiencies noted in the NOID. The appeal will be dismissed.

The director terminated the applicant's temporary resident status because he failed to file the application for adjustment of status from temporary to permanent residence within the 43-month application period.

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 the alien fails to file for adjustment of status from temporary to permanent resident on Form I-698 within forty-three months of the date he/she was granted status as a temporary resident under § 245a.1 of this part. 8 C.F.R. § 245a.2(u)(1)(iv). The burden to file the adjustment application in a timely manner remains with the applicant. *See* 8 C.F.R. § 245a.3(d).

The record reflects that the applicant was granted temporary resident status on December 2, 2005. The 43-month eligibility period for filing for adjustment expired on July 1, 2009. The Form I-698, Application for Adjustment of Status from Temporary to Permanent Resident, was first received by United States Citizenship and Immigration Services (USCIS) on November 8, 2009. Thus, the director terminated the applicant's temporary resident status.

On appeal to the termination of the applicant's temporary resident status, the applicant asserts that he received ineffective assistance from his attorney, who failed to advise him of the need to timely file the Form I-698 application.

Any appeal or motion based upon a claim of ineffective assistance of counsel requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard, (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond, and (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988). In this case, there is no G-28 Notice of Appearance as Attorney or Accredited Representative and the identity of the attorney or representative it is not even clear. As such, the AAO will not consider the ineffective assistance assertion in the analysis.

As noted above, the burden to file the adjustment application in a timely manner remains with the applicant. *See* 8 C.F.R. § 245a.3(d). However, the record contains a Notice of Action dated

December 2, 2005 indicating the applicant was in valid temporary resident status through December 1, 2009. As noted on appeal, the Notice of Action is ambiguous regarding the deadline for filing the Form I-698. As such, the AAO found that the applicant overcame the director's basis for terminating temporary resident status. However, in a NOID dated February 23, 2011, the AAO informed the applicant that he failed to submit sufficient evidence of his continuous residence in the United States during the relevant period. He was afforded 21 days to respond with additional evidence. The applicant submitted a timely response, including additional affidavits.

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 throughout 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 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).

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) 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 periods, 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, 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.* 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. *See* 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 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 or petitioner 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 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.

The evidence contained in the record which pertains to this period consists of the following:

- An affidavit from [REDACTED] who indicates that he met the applicant at church in December 1981 and has seen him regularly since their initial meeting. He does not indicate how he dates his first acquaintance with the applicant or where he lived during the relevant period. To be considered probative and credible, witness affidavits must do more than simply state that an affiant knows you and that you have lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Upon review, the AAO finds that, individually and together, the witness statements do not indicate that their assertions are probably true. Therefore, this affidavit has little probative value.
- An affidavit from [REDACTED] indicating that the applicant lived with him at [REDACTED] from December 1987 through the present. The letter is dated August 24, 1993.

- A California Identification Card dated May 1986 indicating the applicant's address at [REDACTED]. This address is inconsistent with the testimony of [REDACTED] who indicates that the applicant moved to this address in December 1987. Furthermore, on his current Form I-687 and a prior Form I-687, which is contained in the record, the applicant indicates that he lived at [REDACTED] beginning in January 1984. Also, the record contains an affidavit from [REDACTED] who indicates that the applicant was a tenant at [REDACTED] beginning in January 1984. 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. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the application. *Id.* at 591.
- A copy of an invoice dated August 18, 1980 addressed to the applicant at [REDACTED]. The applicant indicates on his Form I-687 that he moved to this address in 1998.
- Employment letters from [REDACTED] indicates that the applicant was employed from December 1984 until December 1986 in maintenance. This is inconsistent with his current Form I-687 in which he indicates that he worked for [REDACTED] from December 1986 until December 1986. [REDACTED] indicates that the applicant was employed in construction clean up from August 1987 until August 1990. [REDACTED] indicates that the applicant worked in office maintenance from December 1981 until October 1984. All three letters are nearly identical. None of the letters 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. 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.
- Several copies of Western Union receipts date stamped in 1985, 1986 and 1987. These receipts are not verifiable.

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. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's proof may, of

course, lead to a reevaluation of the reliability and sufficiency of the application. *Id.* at 591. The applicant has not addressed this inconsistency and the affidavit will be given no probative weight.

None of the witness statements provide concrete information, specific to the applicant and generated by the asserted associations with her, which would reflect and corroborate the extent of those associations and demonstrate that they were a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the affidavits. To be considered probative and credible, witness affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Upon review, the AAO finds that, individually and together, the witness statements do not indicate that their assertions are probably true. Therefore, they have little probative value.

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 *entire* 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. Any temporary resident status previously granted the applicant is hereby terminated.

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