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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**



L1

DATE: Office: HOUSTON, TEXAS  
**APR 02 2012**

FILE: 

IN RE: Applicant: 

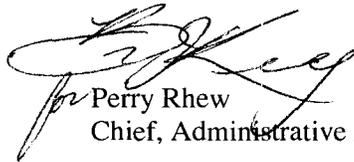
APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the  
Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

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 application for temporary resident status under Section 245A of the Immigration and Nationality Act (Act) was terminated by the Field Office Director (director), Houston, Texas. The decision to terminate is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined that the applicant has failed to establish by a preponderance of the evidence that she entered the United States before January 1, 1982 and resided continuously in the country in an unlawful status through the requisite period and terminated the applicant's temporary resident status. Specifically, the director noted that the applicant provided substantively deficient and contradictory evidence in support of her application. The director determined that based on the applicant's testimony at her interview on July 28, 2010, that she was absent from the United States for more than 45 days in 1986, which interrupted her continuous residence in the United States.

On appeal, counsel denies that the applicant's absence from the United States in 1986 was more than 45 days. Counsel asserts that the applicant was not provided with a copy of the Sworn Statement where she indicated that she was absent from the United States for more than 45 days. Counsel also claims that the applicant did not receive a copy of the director's notice of decision terminating her temporary residence status.<sup>1</sup> Counsel also claims that the applicant was not given a copy of the statement she signed stating that she was away from the United States for five months in 1986.<sup>2</sup> In support of the appeal, counsel submits affidavits from witnesses who claim to have personal knowledge that the applicant's absence from the United States in 1986 was less than 45 days. The AAO has considered counsel's assertions, reviewed all of the evidence, and has made a *de novo* decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the evidence.<sup>3</sup>

The temporary resident status of an alien may be terminated upon the determination that the alien was ineligible for temporary residence. Section 245A(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1255a(b)(2)(A), and 8 C.F.R. § 245a.2(u)(i).

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<sup>1</sup> The record reflects that on September 8, 2010, the director issued a Notice of Intent to Terminate (NOIT) the applicant's temporary resident status and mailed it to her last known address in Katy, Texas. The applicant received the NOIT and filed a timely response. On September 26, 2010, the director terminated the applicant's temporary residence status finding that the response to the NOIT was insufficient to overcome the grounds of termination. The director mailed the Notice of Termination (NOT) to the applicant's last known address of record and sent a copy to her attorney of record at her last known address of record. The NOT was mailed to the same address as the applicant's current address where the NOIT was sent to and the applicant acknowledged receiving. There is no evidence in the record that the NOT was returned as undeliverable.

<sup>2</sup> A copy of the Sworn Statement dated December 20, 2002, will be mailed to the applicant with this decision.

<sup>3</sup> The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

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) 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 filed 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.1(c)(1).

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 an “emergent reason”. 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).

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. 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).

The applicant, a native of Colombia who claims to have lived in the United States since 1981, submitted a Form I-687, Application for Status as a Temporary Resident under section 245A of the Immigration and Nationality Act (Act), and Form I-687 Supplement, CSS/Newman Class Membership Worksheet on February 4, 2005. The application was approved on January 3, 2006. On August 26, 2011, the director terminated the applicant's temporary resident status.

In a Notice of Intent to Terminate (NOIT) dated September 8, 2010, the director noted that the applicant signed a Sworn Statement on December 20, 2002, stating that she traveled outside the United States on three occasions during the 1980s. The applicant stated that the absences were from December 1983 to January 1984; from April to September 15, 1986; and from August to September 1987. The director found that based on the statement, the applicant had failed to maintain continuous residence in the United States as required by 8 CFR 245a.2(b)(1). The applicant was granted 30 days to submit rebuttal evidence.

The applicant timely responded to the NOIT, denying her December 20, 2002 statement regarding her absence from the United States in 1986. She claims that her absence from the

United States in 1986 was from the end of August 1986 to September 15, 1986. The applicant submitted affidavits from friends and acquaintances who claim to have personal knowledge about the applicant's trip outside the United States in 1986. They all claim that the applicant's absence in 1986 was less than 45 days. On August 27, 2011, the director issued a Notice of Termination (NOT) terminating the applicant's temporary resident status on the grounds that the information submitted in rebuttal was insufficient to overcome the grounds of termination of temporary resident status stated in the NOIT.

On appeal, counsel asserts that the applicant's trip outside the United States in 1986 was less than 45 days and did not interrupt her continuous residence in the country. Counsel submits affidavits from witnesses who claim to have personal knowledge that the applicant's absence from the United States in 1986 was less than 45 days.

The issue in this proceeding is whether the applicant has established her eligibility for temporary resident status. As stated, the applicant must establish that she (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 her claim to have entered the United States before January 1982 and continuously resided in an unlawful status for the requisite period consists primarily of affidavits from individuals who claim to have employed or otherwise known the applicant in the United States during the 1980s. The AAO has reviewed the evidence in its entirety to determine the applicant's eligibility; however, the AAO will not quote each statement in this decision. Some of the evidence submitted indicates that the applicant resided in the United States 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 record contains a Sworn Statement completed by the applicant under penalty of perjury on December 20, 2002. The applicant indicated that she was absent from the United States on three separate occasions during the requisite period. The applicant listed the absences as: December 1983 to January 1984; April 1986 to September 15, 1986; and August 1987 to September 1987. The applicant's admitted absence from the United States from April 1986 to September 15, 1986, was more than 45 days. An absence of such duration interrupts an alien's continuous residence in the United States under 8 C.F.R. § 245a.15(c)(1), unless (s)he can show that a timely return to the United States could not be accomplished due to emergent reasons. While the term "emergent reasons" is not defined in the regulations, there is some pertinent case law. In *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), the Board of Immigration Appeals held that *emergent* means "coming unexpectedly into being." The applicant has not established that emergent reasons within the meaning of 8 C.F.R. § 245a.15(c)(1), prevented her timely return to the United States from Colombia within the 45-day period allowed in the regulation. Therefore, the applicant has failed to establish by a preponderance of the evidence that she 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*.

The record also contains: (1) a statement dated February 14, 1990, from [REDACTED] who identified herself as the owner of [REDACTED] stating that the applicant was employed as a receptionist from August 15, 1981 to January 9, 1984 and (2) a statement dated March 10, 1990, from [REDACTED] who identified herself as assistant director, [REDACTED] stating that the applicant was employed as a receptionist from March 1, 1984 to August 18, 1986.

The statements above regarding the applicant's employment in the United States during the 1980s, do not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because the statements do not indicate the applicant's address during the periods of employment, do not provide a description of the applicant's duties and responsibilities, do not indicate whether the information about her employment was taken from company records, do not indicate where the records are kept and whether such records are available for review. The statements are not supplemented by any earnings statements, pay stubs, or tax records demonstrating that the applicant was actually employed during any of the years claimed. In addition, the statement from [REDACTED] is inconsistent with the employment information listed by the applicant on the Form I-687. The record reflects that the applicant did not provide any information about her employers from 1981 through 1984. The first employment information provided by the applicant was March 1984 at [REDACTED]. The record also reflects that the applicant did not indicate [REDACTED] as any of her employers in the United States.

The inconsistencies discussed above are material to the applicant's claim in that they have a direct bearing on her residence and employment in the United States during the requisite period. No evidence of record resolves these inconsistencies. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence pointing to where the truth lies. 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). Accordingly, these contradictions undermine the credibility of the applicant's claim of entry into the United States prior to January 1, 1982 and continuous residence in the United States during the requisite period and the reliability of the employment verification as credible evidence of the applicant's residence in the United States during the requisite period.

As for the affidavits in the record from individuals who claim to have known the applicant resided in the United States during the 1980s, they have minimalist or fill-in-the-blank formats with very few details from the affiants. Considering the length of time they claim to have known the applicant – in most cases since 1981 – the affiants provided very few details about the applicant's life in the United States and the nature and extent of their interactions with her over the years. The affiants do not state how they date their initial meeting with the applicant or how they acquired knowledge of when or how the applicant entered the United States. The affidavits are not accompanied by any documentary evidence – such as photographs, letters, and the like – demonstrating the affiants' personal relationships with the applicant in the United States during

the 1980s. While some of the affiants provided documentation to establish their identities, none provided evidence of their residence in the United States during the requisite period.

In her September 28, 2010 affidavit, [REDACTED] claims that the applicant worked for her as a receptionist at Friends Insurance Services, Houston, Texas, from April to August 1986, when she left to travel to Colombia. The applicant did not list [REDACTED] as any of her employers in the United States during 1986. As previously noted, 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, id.*

In view of the substantive shortcomings and the inconsistencies discussed above, the AAO finds that the affidavits have little probative value. They are not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988.

Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that she is eligible for the benefit sought. The various statements currently in the record which attempt to substantiate the applicant's residence and employment in the United States during the statutory period are not objective, independent evidence such that they might overcome the inconsistencies in the record regarding the applicant's claim that she maintained continuous residence in the United States throughout the statutory period, and thus are not probative.

Based on the foregoing, the AAO finds that the applicant has failed to resolve the inconsistencies in the record with independent objective evidence. Furthermore, the applicant has failed to establish by a preponderance of the evidence that she 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. As the applicant has not overcome the basis for the termination of status, the appeal must be dismissed.

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