



**U.S. Citizenship  
and Immigration  
Services**

[REDACTED]

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Date: DEC 03 2012 Office: HOUSTON

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.

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The application for temporary resident status under Section 245A of the Immigration and Nationality Act (Act) was initially approved. Subsequently, the director of the Houston Field Office terminated the applicant's temporary resident status. The decision to terminate is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The director determined that the applicant had not established by a preponderance of the evidence that he had continuously resided in the United States throughout the requisite period. The director terminated the applicant's temporary resident status, finding that the applicant had not met his burden of proof and was, therefore, not eligible to adjust to temporary resident status.

On appeal, counsel for the applicant asserts that the director erred by terminating the applicant's temporary resident status. Counsel asked for a copy of the record of proceedings. The request was processed on September 18, 2012.

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 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, *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.

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 (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 furnished sufficient credible evidence to demonstrate that he entered before 1982 and resided in the United States throughout the requisite period. In this case, the submitted evidence is relevant, probative and credible. The director noted several inconsistencies, which the AAO finds are not significant in this case.

In a notice of intent to terminate the applicant's temporary resident status, the director evaluated the affidavits of witnesses in the record of proceedings. The director noted that none of the affiants provided any tangible evidence in support of their claims. The director also noted that many of the affiants only attested to the applicant's residence in the United States for part, and not all, of the requisite period. The AAO evaluates each item of evidence individually and collectively. Although one affiant may only have knowledge of the applicant's residence for part of the requisite period, at least one affiant testified to the applicant's residence in the United States from a date prior to January 1, 1982.

In a notice of termination, the director noted that the applicant had indicated on his Form I-687 that he had been absent on three occasions during the requisite period. According to the Form I-687, each absence was for less than one month. On the form, the applicant indicated he was gone from June 1982 to June 1982, from August 1985 to August 1985 and from March 1987 to March 1987. Subsequently, the applicant indicated to the Service that no single trip lasted for more than 45 days. The director determined that "without knowing exactly how many days [the applicant was] absent during that trip, the Service is unable to determine whether the trip broke the continuity of [his] physical presence in the United States."

The applicant has established by a preponderance of the evidence that he entered the United States before January 1, 1982 and maintained continuous, unlawful residence for the duration of the requisite period. Consequently, the applicant has overcome the particular basis of denial cited by the director.

The appeal will be sustained. The director shall reopen and adjudicate the applicant's Form I-698 application.

ORDER:       The appeal is sustained.