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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
*Office of Administrative Appeals (AAO)*  
20 Massachusetts Ave., N.W. MS2090  
Washington, DC 20529-2090  
**U.S. Citizenship  
and Immigration  
Services**

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**JAN 10 2012**



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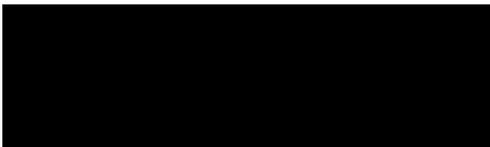
Applicant:



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 October 19, 2010 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 15 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.

On February 14, 2007, the director issued a Notice of Intent to Terminate (NOIT) the applicant's temporary resident status because his Form I-698 Application to Adjust from Temporary Resident Status was denied on May 9, 2006. The applicant responded to the NOIT in a timely manner on March 12, 2007. However, the director issued a Notice of Termination on March 23, 2007 indicating that United States Citizenship and Immigration Services (USCIS) did not receive a response to the NOIT, that the applicant's Form I-698 was denied and therefore, he was no longer eligible for temporary resident status. The applicant appealed that decision, indicating that he submitted a response to the NOIT and that he never received a Notice of Denial of the Form I-698 and he was not afforded appeal rights.

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 USCIS failed to issue a Notice of Denial of the Form I-698 to the applicant's correct address. Therefore, he was not afforded the right to appeal that decision. However, the AAO found that the director's decision on the Form I-698 was erroneous because the record reflects that he passed the tests required under section 312 of the Immigration and Nationality Act (Act) (relating to minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States). The AAO will did not withdraw the termination of the applicant's temporary resident status, however, as the director correctly terminated his temporary residence.

On September 2, 2010, the AAO issued a Notice of Intent to Deny (NOID) the application because the applicant failed to establish his continuous residence throughout the requisite period. He was provided an opportunity to rebut this ground for terminating his temporary residence. The applicant filed a timely response to the NOID in which he indicated that the AAO failed to apply the correct standard of proof in evaluating the applicant's evidence of continuous residence during the relevant period. He does not submit any additional evidence in support of his eligibility.<sup>1</sup>

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.

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<sup>1</sup> The applicant requested a copy of the record of proceedings. This request was processed on August 30, 2011.

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.

In support of his claim of continuous residence in the United States from prior to January 1, 1982, throughout the relevant period the applicant submits the following:

- Letters from [REDACTED] indicating that they were the landlords at [REDACTED] [REDACTED] respectively. Both indicate that the applicant was their tenant during the relevant period. The AAO notes that a P.O. Box does not constitute a physical address. Therefore, these letters are not probative. The applicant does not address this issue on appeal.
- Employment letters from [REDACTED] indicating that the applicant was employed during the relevant period. These letters fail to 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 above 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.
- Affidavits from [REDACTED] The affiants do not indicate how they date their initial meeting with the applicant, how frequently they had contact with him, or how they had personal knowledge of his presence in the United States.

The applicant has not addressed the insufficiencies noted and he has not submitted any additional evidence. 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.