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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



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DATE: **JUL 06 2012** Office: HOUSTON

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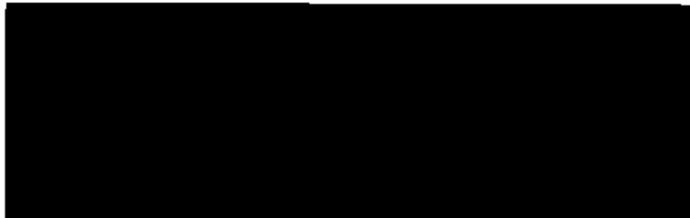


IN RE: Applicant:



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's temporary resident status under Section 245A of the Immigration and Nationality Act (Act) was terminated by the Field Office Director (director), Houston. 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 had failed to establish by a preponderance of the evidence that he 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 contradictory statements and substantively deficient documents in support of his application.

On appeal, counsel indicated on the Form I-694, Notice of Appeal of Decision under Section 210 or 245A he filed on March 28, 2012, that he would submit a brief within 30 calendar days with supporting documents to establish the applicant's continuous presence in the United States. On May 24, 2012, the AAO sent a request to counsel to submit the indicated brief and supporting documents. On May 25, 2012, counsel submitted an affidavit from the applicant in response to the AAO's request. 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.¹

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).

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 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).

¹ 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).

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 Mexico who claims to have lived in the United States since before January 1, 1982, 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 December 1, 2005. The application was approved on June 1, 2006. On February 27, 2012, the director terminated the applicant's temporary resident status.

In a Notice of Intent to Terminate (NOIT) dated May 27, 2011, the director notified the applicant that the witness affidavits were substantively deficient and not credible. The director also noted that the applicant provided contradictory statements regarding the date and place of entry into the United States and his absences from the United States during the requisite period. The applicant was granted 30 days to submit rebuttal evidence and also additional documentation in support of his Form I-687 application.

Counsel responded timely and submitted an affidavit from the applicant providing an explanation for the evidentiary deficiencies cited in the NOIT and additional affidavits from witnesses attesting to the applicant's residence in the United States during the requisite period. On February 27, 2012, the director issued a Notice of Termination (NOT) terminating the applicant's temporary resident status on the grounds that the rebuttal evidence is insufficient to overcome the grounds of termination of temporary resident status stated in the NOIT.

On appeal, the applicant asserts that the evidence previously submitted in the record establishes by a preponderance of the evidence that he continuously resided in the United States in an unlawful status for the duration of the requisite time period. The applicant states that due to significant passage of time, he is unable to provide more affidavits from individuals who have knowledge of his residence in the United States during the 1980s.

The issue in this proceeding is whether the applicant has established his eligibility for temporary resident status. As stated, the applicant must establish that he (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 his claim to have arrived in the United States before January 1982 and continuously resided in the country in an unlawful status for the duration of the requisite period consists primarily of affidavits from witnesses who claim to have employed, worked with, resided with or otherwise have personal knowledge that the applicant resided in the United States during the requisite period. 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 affidavits in the record from witnesses who claim to have employed, resided with, worked with or otherwise known the applicant during the 1980s, all have minimalist or fill-in-the-blank formats with little personal input by the affiants. Considering the length of time they claim to have known the applicant – in most cases since the early 1980s – the affiants provide remarkably little information about the applicant’s life in the United States and the nature and the extent of their interaction with him over the years. In his affidavit of April 12, 2005, [REDACTED] attests that the applicant has been residing in the United States since 1981 and that he moved in and lived with the applicant and his family from 1985 to 1988. Mr. [REDACTED] does not provide any evidence of how he knew that the applicant has been residing in the United States since 1981. Also, he does not provide the address of the residence he shared with the applicant from 1985 to 1988. In view of these substantive deficiencies, 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.

The record contains affidavits from [REDACTED], claiming that the applicant worked for them from 1981 to 1984; 1984 to 1987; and 1987 to 1989; respectively. The affidavits do not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because the affidavits were not prepared on company letterheads, bearing the address and telephone numbers of each company, do not provide a description of the applicant’s duties and responsibilities, do not indicate where the applicant resided during the periods of employment, do not indicate whether the information about the applicant’s employment was taken from company records, and do not indicate whether such records are available for review. In addition, the affidavits are not supplemented by any earnings statements, pay stubs, or tax records demonstrating that the applicant was actually employed during any of the years indicated on the affidavits. As such, the affidavits have limited probative value. They are not persuasive evidence of the applicant’s continuous unlawful residence in the United States during the requisite period.

The AAO notes that the record contains contradictory statements from the applicant that call into question the veracity of his claim, the credibility and the reliability of the evidence he submitted in support of his application.

On October 6, 2004, the applicant completed a sworn statement in connection with his adjustment interview. The applicant stated that he first entered the United States in October 1981 and that he was absent from the United States four times during the requisite period. The absences were in 1984 for 20 days; 1986 for 35 days; 1987 for two months and 1989 for 15 days. The applicant also stated that he lived with friends at four different addresses: Chimney Rock Apartments from 1981 to 1982; Dunlap Apartments from 1982 to 1984; Burdine Street Apartment from 1985 to 1986 and Chimney Rock Apartment from 1987 to 1989. The sworn

statement is inconsistent with the information he provided on the Form I-687. On that form, the applicant indicated his residential address in the United States as [REDACTED], Texas, from 1981 to 1993, and he indicated two absences from the United States during the requisite period – within the month of April 1987 and from January to February 1988.

The inconsistencies call into question the veracity of the applicant's claim that he continuously resided in the United States from before January 1, 1982 through May 4, 1988. 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). No evidence of record resolves these inconsistencies.

Beyond the decision of the director, the AAO finds that the applicant may be ineligible to adjust status pursuant to both 8 C.F.R. § 245a.2(d)(5) and *Matter of E-M-*, *supra*.² The applicant's admitted absence from the United States for sixty (60) days in 1987 exceeds the 45 days allowed in the regulation for a single absence. An absence of such duration is a clear break in any continuous residence the applicant may have established, unless he can establish that emergent reasons within the meaning of 8 C.F.R. § 245a.15(c)(1), prevented his timely return to the United States from Mexico within the 45-day period allowed in the regulation. Therefore, the applicant may be found ineligible to adjust status on this ground as well.

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 he 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 requisite period are not objective, independent evidence such that they might overcome the inconsistencies in the record regarding the applicant's claim that he maintained continuous residence in the United States throughout the requisite period, and thus are not probative.

Accordingly, the AAO finds that 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 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.

² An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the original decision does not identify all of the grounds for denial. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)(noting that the AAO conducts appellate review on a *de novo* basis).

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