

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**PUBLIC COPY**

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**

[REDACTED]

L1

DATE: JUL 09 2012 Office: LOS ANGELES

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.

  
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), Los Angeles, California. 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 determined that the applicant's admitted absence in May 1987 of more than 45 days, interrupted her continuous residence in the United States. The director also determined that the documentation submitted by the applicant in support of her application is substantively deficient and not credible.

On appeal, counsel admits that the applicant's absence in May 1987 was in excess of 45 days, but claims that her untimely return to the United States was due to emergent reason, which made it impossible for her to return to the United States in a timely manner. Counsel contends that the applicant is statutorily eligible for the benefit sought.

In support of the appeal, counsel submits a statement from [REDACTED] stating that he examined and treated the applicant in Mexico on June 21, 1987 for [REDACTED] a declaration by [REDACTED] and copies of photographs of her and the applicant, which [REDACTED] claims were taken in the United States during the 1980s. 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>1</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).

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).

---

<sup>1</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).

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 Mexico who claims to have lived in the United States since July 10, 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 January 9, 2006. The application was approved on April 3, 2007. On January 17, 2012, the director terminated the applicant's temporary resident status.

In a Notice of Intent to Terminate (NOIT), the director noted that the applicant's departure from May to August 1987 was in excess of 45 days allowed for a single absence and that the aggregate of all absences exceeded 180 days. The director determined that the absence interrupted the continuous residence the applicant may have accumulated and that she has failed to establish 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, submitting her own statement of explanation and statement from counsel. On January 17, 2012, 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 admits that the applicant's absence from May to August 1987 was in excess of 45 days, but claims that the applicant's untimely return to the United States was due to emergent reason, which made it impossible for her to return to the United States in a timely manner.

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.

In this case, the applicant indicated on the Form I-687 Application that she traveled outside the United States on four separate occasions during the requisite period. The departures were from June to August 1984; December 1987 to January 1988; May to August 1987; and December 1987 to January 1988. The applicant admitted that her trip to Mexico, from May to August 1987, exceeded the 45 days stipulated for a single absence. 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."

On appeal, the applicant claims that she was unable to return to the United States as she had planned because she became very ill in Mexico and was under the care of a physician who advised her not to travel until she has fully recovered. In support of this claim, the applicant submitted photocopy of an undated statement signed by [REDACTED] states that she examined the applicant on June 21, 1987 and found out that she was feverish and in a "bad condition in general." [REDACTED] further states "lab studies were ordered to determine the specific cause of [the applicant's] condition. The diagnosis was typhoid fever and due to the advanced illness and possible complications, it was prescribed a 20 day treatment, special diet and rest for 30 days under close supervision." The AAO accepts [REDACTED] statement of the applicant's illness, and finds that the applicant established an emergent reason for the delay in her return to the United States.

The remaining evidence in the record consisting of witness statements and photocopied pictures.

The photocopied photographs, which the applicant's sister, [REDACTED] claims were taken in the United States from 1983, have little probative value as evidence of the applicant's residence in the United States during the requisite period because the Service cannot verify when and where the photographs were taken.

The affidavits in the record from individuals who claim to have known the applicant resided in the United States during the 1980s, have 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 provide concrete information, specific enough 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 in the United States during the requisite period.

The AAO notes that the applicant has made contradictory statements in support of the Form I-687 application that calls into serious question the credibility of the applicant's claim and the veracity of her statements. It is noted that while the applicant claims that she entered the United States in July 1981 and resided continuously in the country since then, a Form I-140, Immigrant Petition for Alien Worker, the applicant filed on December 26, 2001, indicates that her date of arrival in the United States was 1996. On the Form ETA 750, Application for Alien Employment Certification, the applicant indicated that she was attending school in [REDACTED] from January 1993 to October 1995, while she claimed on the Form I-687 that she was residing in the United States during the same period. Although the information on the Form I-140 is outside the requisite period for legalization, they are presented here to discredit the applicant's claim that she has met the eligibility requirement to adjust status under section 245A of the Act.

Upon a *de novo* review of all of the evidence in the record, the AAO finds that 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.