



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY

[Redacted]

L1

DATE: **JUN 13 2012** Office: LOS ANGELES, CA.

FILE:

[Redacted]

IN RE: Applicant:

[Redacted]

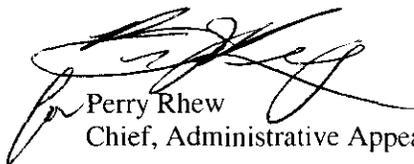
APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

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 applicant's 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 failed to establish his absence from the United States from September to November 1987 was less than the forty-five (45) day limit for a single absence from the United States during the requisite period as set forth in 8 C.F.R. § 245(a).15(c)(1)(i), and that the affidavits of witnesses submitted by the applicant in support of his application have minimal probative value as evidence of his continuous residence in the United States from before January 1, 1982 through May 4, 1988.

On appeal, counsel asserts that the termination was based on erroneous facts; that the testimony presented by the applicant has not been properly considered and evaluated; that the witnesses provided by the applicant in support of his claim have not been properly examined and considered and that the applicant became sick while on this trip to India in 1987, which delayed his return to the United States in a timely manner. Counsel references a photocopy of a statement from Dhillon General Hospital in India which was previously submitted to the record, as evidence that the applicant became ill in India in 1987. Counsel also submitted additional affidavits from witnesses attesting to the applicant's residence in the United States during the requisite period. The AAO has considered the applicant'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).

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

---

<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).

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 India who claims to have lived in the United States since May 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 July 7, 2004. The application was approved on May 18, 2005. On August 5, 2011, the director terminated the applicant's temporary resident status.

On January 30, 2008, the director issued a Notice of Intent to Terminate (NOIT) to the applicant informing him of the Service's intent to terminate his temporary resident status. Specifically, the director noted that the applicant's admitted absence from the United States from September to November 1987, exceeded the forty-five day limit for a single absence from the United States during the requisite period, as set forth in 8 C.F.R. § 245(a).15(c)(1)(i). The director also noted that the affidavits submitted by the applicant in support of his application were substantively deficient and therefore have minimal probative value as evidence of the applicant's residence in the United States during the requisite period. The applicant was granted 30 days to submit rebuttal evidence.

The applicant timely responded to the NOIT with an explanation for the evidentiary deficiencies cited in the NOIT. On August 5, 2011, the director issued a Notice of Termination (NOT) terminating the applicant's temporary resident status on the grounds that the information and documentation submitted in rebuttal were insufficient to overcome the grounds of termination of temporary status.

On appeal, counsel acknowledges that the applicant was absent from the United States from September to November 1987, but contends that the absence was 45 days or less. Counsel does not submit evidence to establish the exact dates of the applicant's trip to India. Contrary to counsel's assertion, the applicant stated under oath at his LIFE interview on January 16, 2002, that he traveled to India from September 1987 to November 1987. Also on the Form I-687 dated February 28, 1990, the applicant indicated that he was absent from the United States to visit his

family in India from September 1987 to November 1987, and on the current Form I-687, the applicant indicated his absence from the United States as "9/87 to 11/87." Counsel has submitted no documentation to establish the specific dates of the applicant's departure from the United States in September 1987 and his return to the United States in November 1987. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Therefore, the AAO finds that the applicant's absence from September to November 1987, exceeded the 45-day limit and interrupted any unlawful presence he may have accumulated.

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, counsel asserts that the applicant's return to the United States from India was delayed because the applicant became ill while in India. In support of this assertion, counsel references a photocopy of a statement from [REDACTED] dated August 26, 2004, signed by [REDACTED]. The statement indicates "[the applicant] was suffering from right Acute Renal Colic; Abdominal pain with vomiting under serious medical condition was admitted in this hospital. He had undergone my treatment w.e.f. 15<sup>th</sup> Oct 1987 to 30<sup>th</sup> Oct 1987. He was discharged on 1<sup>st</sup> Nov 1987. He was advised for surgery but he refused for surgery because he was going back to USA." The statement from [REDACTED] does not provide detailed information on the nature and severity of the applicant's health during the stated period. The statement is not supplemented by actual medical records or hospital records demonstrating the nature and severity of the applicant's condition, the treatment he received, or how the illness impacted his timely return to the United States. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In the absence of supporting documentation, little weight will be accorded to the medical statement as evidence of the applicant's illness in India. Without credible and probative evidence to the contrary, it cannot be concluded that the applicant's absence from the United States from September to November 1987 was due to "emergent reason" within the meaning of *Matter of C, supra*.

As previously indicated, 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 emergent reasons. 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's admitted absence from the United States from September to November 1987, a period of more than 45 days, is clearly a break in any period of continuous residence he may have established. As he has not provided any credible or probative evidence that it was his unexpected and sudden poor health that was the "emergent reason" for his failure to return to the United States in a timely manner, he has failed to establish by a preponderance of the evidence that he 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 applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

The record contains a statement from Jarnail Singh Athwal, who identified himself as the minister of Sikh and Hindu religion and founder [REDACTED], stating that the applicant is a follower of the Sikh religion and "has been a member of our organization since May of 1981." [REDACTED] also states that the applicant has regularly attended religious congregations at the Sikh Temple in Vermont and in Buena Park during his membership.

The statement from [REDACTED] does not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(v), which specifies that attestations by religious and related organizations (A) identify the applicant by name, (B) be signed by an official (whose title is shown), (C) show inclusive dates of membership, (D) state the address where the applicant resided during the membership period, (E) include the organization seal impressed on the letter or the letterhead of the organization, (F) establish how the author knows the applicant, and (G) establish the origin of the information about the applicant. The statement does not provide the applicant's address or the inclusive dates of his membership, does not indicate how and when [REDACTED] met the applicant, and does not state whether the information about the applicant's membership and activities at the center was based on [REDACTED] personal knowledge, the Temple's records, or hearsay. Since the letter does not comply with sub-parts (C), (D), (E), (F), and (G) of 8 C.F.R. § 245a.2(d)(3)(v), the AAO concludes that the letter has little probative value. It is not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

As for the affidavits from witnesses attesting to the applicant's residence in the United States during the requisite period, the affiants provided very little detail about the applicant's life in the United States and the nature and extent of their interactions with him over the years. The affiants failed to provide concrete information, specific to the applicant and generated by the asserted associations with him, 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 during the period addressed in the affidavits. The affidavits are not accompanied by any documentary evidence – such as photographs, letters, and the like – demonstrating the witnesses' personal relationships with the applicant in the United States during the 1980s. 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.

Upon a *de novo* review of all of the evidence in the record, the AAO finds that the applicant has failed to establish that he continuously resided in the United States during the requisite period. Thus, 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.

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