

Some information deleted to
protect privacy and security.
Invasion of privacy and 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: **JUN 25 2012** Office: CHICAGO

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, granted pursuant to the terms of the settlement agreements reached in *Catholic Social Services, Inc., et al., v. Ridge, et al.*, CIV. NO. S-86-1343-LKK (E.D. Cal) January 23, 2004, and *Felicity Mary Newman, et al., v. United States Immigration and Citizenship Services, et al.*, CIV. NO. 87-4757-WDK (C.D. Cal) February 17, 2004 (CSS/Newman Settlement Agreements), was terminated by the Director, Chicago, Illinois. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant was granted temporary resident status on May 24, 2007 under section 245A of the Immigration and Nationality Act (Act), as amended, 8 U.S.C. § 1255a. However, the regulation at 8 C.F.R. § 245a.2(b)(1) states in pertinent part, "the temporary resident status may be terminated . . . [if] it is determined that the alien was ineligible for temporary residence under section 245A of this Act"

The director issued a Notice of Intent to Terminate (NOIT) the applicant's temporary resident status. The NOIT indicated that the information regarding residence was incomplete and inconsistent. The director indicated that the applicant submitted affidavits contained insufficient detail to be considered probative. Specifically, the director noted that the applicant submitted several affidavits in support of his continuous residence in the United States during the relevant period, which contradict his testimony. The director also noted that the applicant entered the United States in July 1981 using a valid B1/B2 visitor visa and therefore was not present in the United States unlawfully prior to January 1, 1982.

On appeal, the applicant indicates that the director erred in denying the application. The applicant indicates that director referenced incorrect requirements in the Notice of Denial. He did not address the issue of his lawful entry in July 1981.

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 through the end of the relevant period.

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 245(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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her 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).

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).

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.* at 80. 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, 431 (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 eligibility, the applicant submits the following:

- An employment verification letter from [REDACTED] who indicates that the applicant was employed by [REDACTED] from May 1981 until June 1987. This letter does not contain any additional information and fails 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 United States Citizenship and Immigration Services (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 AAO also notes that the applicant did not enter the United States until July 23, 1981, thus casting doubt on the reliability of his employment beginning in May 1981. The applicant was informed of this inconsistency in the Notice of Intent to Terminate the applicant’s temporary resident status (NOIT). In response, the applicant indicates only that the affiant was confused due to the passage of time.

- A copy of the applicant's B1/B2 visa, and entry stamp indicating that the applicant entered the United States on July 23, 1981 in lawful nonimmigrant status. The director noted in the NOIT that the applicant entered the United States in lawful status and provided the applicant with an opportunity to address this issue. In response, the applicant indicates that he violated his lawful status prior to January 1, 1982; however, he does not indicate the specific manner of this violation. The applicant seems to indicate that his lawful status expired prior to January 1, 1982, however, there is no evidence contained in the record which supports this assertion.
- A copy of a B1/B2 visa issued to the applicant in [REDACTED] on January 14, 1986 along with passport stamp evidencing a January 31, 1986 entry to the United States via [REDACTED]
- Affidavits from [REDACTED]. The affiants indicate that they met the applicant in May 1981; however, their statements lack sufficient detail to be considered probative. [REDACTED] indicates that the applicant lived with him at [REDACTED] in [REDACTED] from May 1981 until June 1987. As stated above, the applicant first entered the United States in July; therefore, the affiants' testimony is inconsistent with information provided by the applicant regarding his entry. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the application. *Id.* at 591. The AAO also notes that the affiants fail to indicate how they date their initial acquaintance with the applicant.
- A copy of a Form 1099 from 1988 indicating that the applicant earned taxable wages at [REDACTED]. The AAO notes however, that the address noted on the Form 1099 is not an address that the applicant has listed on either his Form I-485 or his Form I687 contained in the record. For this reason, the AAO is unable to determine the veracity of this document.

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. In addition to the lack of sufficient evidence, the applicant has not addressed the circumstances of his entry to the United States using a valid B1/B2 visa. He has indicated in his December 7, 2010 letter to USCIS that, "by the time he left the United States in June 1982, he was out of status." This statement fails to address the applicant's status prior to January 1, 1982 and therefore, the AAO agrees with the director that the applicant has not met his burden.

Given the applicant's reliance upon affidavits with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the end of the relevant 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 to the applicant is hereby terminated.

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