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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

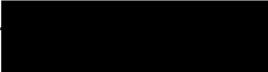
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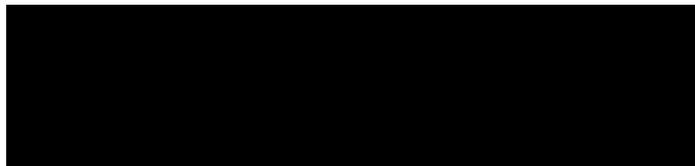
Office: HOUSTON

FILE: 

IN RE: Applicant: 

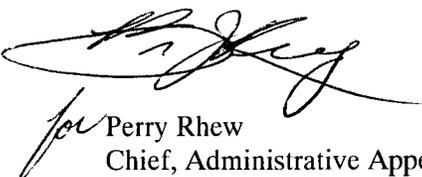
APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the  
Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

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.

  
for Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The termination of temporary resident status by the Director, Houston, Texas, is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant submitted a Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (Act). The Form I-687 was approved. The director determined that the applicant did not establish by a preponderance of the evidence that he had entered and continuously resided in the United States in an unlawful status since prior to January 1, 1982, and for the duration of the requisite period, that he was discouraged by United States Citizenship and Immigration Services (USCIS) from filing for legalization, and that he did not disrupt his period of required physical presence and continuous residence in the United States. The director issued a Notice of Intent to Terminate (NOIT). The director terminated the applicant's temporary resident status, finding that the applicant had not met his burden of proof and that he was therefore not eligible to adjust from temporary resident status pursuant to Section 245A of the Act.

On appeal, counsel states that the director erred in terminating the applicant's temporary resident status.

The regulation at 8 C.F.R. § 245a.2(u)(1)(i) prescribes that the status of an alien lawfully admitted for temporary residence under section 245A(a)(1) of the Act may be terminated at any time if "[i]t is determined that the alien was ineligible for temporary residence under Section 245A of this Act[.]" The applicant bears the burden to 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).

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).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), "until the date of filing" shall mean 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 of filing no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred eighty (180) days during the requisite period, unless the applicant can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed. 8 C.F.R. § 245a.2(h)(1)(i).

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 record in this case shows that the applicant was granted temporary resident status under section 245A(a)(1) of the Act. The director subsequently issued a Notice of Intent to Terminate Temporary Resident Status (NOIT), informing the applicant that he did not establish that he entered the United States prior to January 1, 1982 and lived in a continuous unlawful status during the requisite period, that he or his parents were discouraged by USCIS from filing for legalization, or that he did not disrupt his period of required physical presence and continuous residence in the United States. The director found that the applicant's response to the NOIT was insufficient to overcome the grounds for the denial. The director determined that the applicant failed to provide sufficient evidence to establish that he entered the United States prior to January 1, 1982 and resided in a continuous unlawful status in the United States during the requisite period, that he was discouraged by USCIS from filing for legalization, and that he did not disrupt his period of required physical presence and continuous residence in the United States and terminated the applicant's temporary residence.

The documentation that the applicant submits in support of his claim to have arrived in the United States before January 1, 1982 and lived in an unlawful status during the requisite period consists of his statement, affidavits and other evidence. Counsel states on appeal that the affidavits should prove his continuous physical presence for the statutory period. The AAO has reviewed each document in its entirety to determine the applicant's eligibility; however, the AAO will not quote each witness statement in this decision. Some of the evidence submitted indicates that the applicant resided and/or the declarant/witness met the applicant 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.

During the applicant's Form I-687 interview, the applicant states that he first entered the United States without inspection through Laredo, Texas in December 1981. In his affidavit, the applicant claims that he resided continuously in the United States since the latter part of 1981. The applicant claims on his Form I-687 application that he resided in the United States and began working in the United States as a laborer for various employers since January 1981. The AAO notes that the applicant was born on May 11, 1970, and was very young during his entry into the United States and the requisite statutory period. The applicant claims in his affidavit that he lived monthly with relatives and friends but does not give the address and the names of the relatives and friends he lived with during the requisite period. The record does not contain evidence of the applicant's school attendance and vaccinations in the United States, and evidence of being cared for by an adult during this period. In his affidavit, the applicant claims that he never kept any records, did not attend school, and has no receipts or bills because he was never responsible for

such payments. The applicant does not state in the affidavit the person who was financially responsible for the applicant's care.

The applicant submitted, as proof of his asserted date of entry into the United States and continuous residence in the United States during the requisite period, declarations from [REDACTED]

The declarants state in their declarations, with the exception of [REDACTED] who claim they have known the applicant since birth, that they met the applicant in the 1980s. The declarants claim that since meeting the applicant, they have become good friends and that they have kept in touch and/or maintained their friendship but do not give the frequency of any social events and/or details about any event they attended with the applicant. The declarants attest to the applicant's good moral character but in general, the declarants give little information about the applicant and the events surrounding their association with him during the requisite period.

[REDACTED] state in their declarations that the applicant has been residing in the United States since 1982. This information contradicts the applicant's affidavit where he claims that he resided continuously in the United States since the latter part of 1981. [REDACTED] states that he knew the applicant since they lived in Mexico and when he came to the United States in 1984, they continued their friendship.

In his declaration [REDACTED] states that the applicant resided with him from 1982 to 1986. [REDACTED] does not give the address where they resided during the requisite period. In her letter dated December 12, 2005, [REDACTED] manager of [REDACTED]

[REDACTED] states that the applicant lived in apartment [REDACTED] from January 1981 to December 1990. The applicant claims on his Form I-687 application that he resided at this address since the latter part of 1981.

No evidence in the record can resolve the inconsistencies noted above. 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 petitioner submits competent objective evidence pointing to where the truth lies. No objective evidence of record resolves this inconsistency. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The declarations submitted by the applicant are judged according to their probative value and credibility and not the quantity of declarations submitted by the applicant. To be considered probative and credible, witness statements must do more than simply state that a witness knows an applicant and that the applicant has lived in the United States for a specific period. Their content must include sufficient detail from a claimed relationship to indicate that it probably did exist and that the witness, by virtue of that relationship, does have knowledge of the facts alleged. The AAO finds that the witness statements do not provide sufficient detail. In many of the declarations which are noted, the declarants did not sufficiently explain the facts stated in their declarations and in some instances, the declarants did not explain how they gained the

information about the stated facts. For the aforementioned reasons, the AAO finds that the witness statements can only be given nominal weight.

While an applicant's failure to provide evidence other than affidavits shall not be the sole basis for finding that she/he failed to meet the continuous residency requirements, an application which is lacking in contemporaneous documents cannot be deemed approvable if considerable periods of claimed continuous residency rely entirely on affidavits which are considerably lacking in certain basic and necessary information. The declarants' statements are significantly lacking in detail and do not establish that the declarants actually had personal knowledge of the events and circumstances of the applicant's initial entry and residence in the United States. The declarants do not provide much relevant information beyond acknowledging that they knew the applicant for all or part of the requisite period. Overall, the declarations provided are so deficient in detail that they can only be given nominal probative value. USCIS is not required to contact affiants to verify the veracity of the testimony and to obtain additional evidence from the affiants. An applicant applying for adjustment of status under this part has the burden of proving by a preponderance of evidence that he or she is eligible for adjustment of status under section 245a of the Act. 8 C.F.R. § 245a.2(d)(5).

states in his letter that the applicant worked as a full time carpenter from 1983 through 1988. The applicant would have been 13 years old. The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and, identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable. The letter did not provide the applicant's address at the time of his employment, his duties and whether the information was taken from company records.

An applicant shall be regarded as having resided continuously in the United States if, at the time of filing the application for temporary resident status, no single absence from the United States has exceeded 45 days, and the aggregate of all absences has not exceeded 180 days between January 1, 1982, through the date the application is filed, unless the alien can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the alien was maintaining residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.1(c)(1)(i).

The applicant claims on his current Form I-687 application, signed under the penalty of perjury that he never departed from the United States during the requisite period. During the applicant's Form I-687 interview, the applicant states that he first departed the United States to visit his family in Mexico in December 1987 and remained outside the United States for about six months, returning without inspection in May 1988. Absent an explanation or other evidence, the applicant has not established that his absence from the United States did not disrupt any physical presence and continuous residence in the United States, or that his absence was due to emergent

reasons. "Emergent reasons" is defined as "coming unexpectedly into being." *Matter of C*, 19 I&N Dec. 808 (Comm. 1988). The applicant has not provided evidence to establish that his prolonged absence was necessitated by an event that came "unexpectedly into being." By his own admission, the applicant remained in Mexico for a period of approximately six months. Absent such evidence, the applicant has not shown that his absence from the United States did not disrupt his period of required physical presence and continuous residence in the United States.

The AAO also notes that the applicant did not indicate a departure from the United States on his Form I-687 application during the requisite period and did not provide evidence of being discouraged by USCIS from filing for legalization. Absent such evidence, the applicant has not shown that he was discouraged by USCIS from filing for legalization. The applicant claimed during his Form I-687 interview that he departed the United States to Mexico to visit his family in December 1987 and returned six months later in May 1988. The applicant claims that he did not indicate this departure on his Form I-687 application because it was too long ago. To be eligible to file Form I-687, an applicant must establish (1) that he already filed for class membership in CSS; or (2) were prima facie eligible for IRCA legalization, attempted to file a legalization application with the Immigration and Naturalization Service (INS) or a Qualified Designated Entity (QDE) between May 5, 1987 and May 4, 1988, and had that application rejected (front-desked) by an INS officer or QDE due to a conclusion that the applicant had traveled outside the United States after November 6, 1986 without advance parole, or had traveled outside the United States and returned with a visitor's visa, student visa, or any other type of visa or travel document.

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). The applicant has been given the opportunity to satisfy his burden of proof. The applicant has not provided credible evidence that established that he entered the United States prior to January 1, 1982 and resided in a continuous unlawful status in the United States during the requisite period. The AAO finds that the applicant's temporary resident status was properly terminated pursuant to section 245A(b)(2) of the Act and the corresponding regulation at 8 C.F.R. § 245a.2(u)(1)(iv). Thus, the appeal in this matter will be dismissed.

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