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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: **MAY 25 2012** OFFICE: VERMONT SERVICE CENTER 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. The file has been returned to the National Benefits Center. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

Thank you,

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application for temporary resident status under Section 245A of the Immigration and Nationality Act (Act) was denied by the Vermont Service Center Director. The decision to deny is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record indicates that the applicant is a native of the Central Africa Republic who claims to have resided in the United States since September 1981. He filed an application for temporary resident status under section 245A of the Act (Form I-687) on May 4, 1988.

On December 14, 1990, the director denied the application after determining that the applicant had failed to establish the requisite continuous unlawful residence and continuous physical presence in the United States from before January 1, 1982 through the date of attempted filing during the original one-year application period that ended on May 4, 1988. The director noted that the applicant had been in G-1 non-immigrant status during the requisite period, and therefore, did not establish eligibility for temporary resident status.

On appeal, the applicant asserts that the director erred in denying his application and requested that the application be approved. The applicant submits a copy of the front side of a Form I-94, Arrival Departure Record.

The AAO has 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

An applicant for temporary resident status – under section 245A of the Immigration and Nationality Act (the Act) – 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. *See* 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. *See* 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. *See* 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).

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

¹The 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).

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 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 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.

Although the regulations provide an illustrative list of contemporaneous documents that an applicant may submit, the list also permits the submission of affidavits and any other relevant document. *See* 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant’s 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 issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he continuously resided in the United States in an unlawful status from before January 1, 1982 through the date he attempted to file a Form I-687 during the original one-year application period that ended on May 4, 1988. After reviewing the entire record, the AAO determines that he has not.

Regulations under 8 C.F.R § 245a.2 states in pertinent part:

...

(b) Eligibility. The following categories of aliens, who are otherwise eligible to apply for legalization, may file for adjustment to temporary residence status:

...

(11) A nonimmigrant who entered the United States for duration of status ("D/S") is one of the following classes, A, A - 1, A - 2, G, G - 1, G - 2, G - 3 or G - 4, whose qualifying employment terminated or who ceased to be recognized by the Department of State as being entitled to such classification prior to January 1, 1982, and who has thereafter continued to reside in the United States in an unlawful status. An alien who was a dependent family member and who may be otherwise eligible for legalization may be considered a member of this class of eligible aliens if the dependent family member was also in A and G status when the principal A or G alien's status terminated or ceased to be recognized by the Department of State.

The record establishes that the applicant was in G-1 status during the requisite period. The record reflects that on September 11, 1978, the applicant was admitted as a G-5 non-immigrant and was authorized to stay until September 10, 1979. On October 31, 1978, the applicant's status was changed from that of G-5 non-immigrant to that of a G-1 non-immigrant in the United States for duration of status ("D/S"). The change of status is evidenced on the back of the applicant's Form I-94 that is included in the record.

There is no indication that the applicant was not in his official status as his qualifying employment had not terminated, nor did the Department of State cease to recognize the applicant as being entitled to such classification prior to January 1, 1982. It is noted that the applicant states, on appeal, that he was no longer on the [REDACTED] mission's payroll but would work on call "on and off" when needed until June 1987 when he took a job with the [REDACTED] but the [REDACTED] never changed his status to that of a diplomatic employee. Although at the time he filed his Form I-687 application, the applicant was not a diplomatic employee with the [REDACTED] the record establishes that the applicant was in G-1 non-immigrant status during the requisite period until June 1987 when his employment ended with the [REDACTED]

As the applicant was in G-1 non-immigrant status during the requisite period until June 1987, he cannot establish his continuous unlawful residence throughout the requisite period.

Based on the foregoing analysis of the evidence, the AAO concludes that the applicant has failed to establish his continuous unlawful residence in the United States throughout the requisite period. Thus, the record does not establish that the applicant entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from that date through the date he attempted to file a Form I-687 during the original one-year application period that ended on May 4, 1988. Accordingly, the applicant is ineligible for temporary resident status under section 245A(a)(2) the Act.

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