U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

Date: JUL 18 2014 Office: TAMPA 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:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The applicant filed an application for temporary resident status 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, or *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), which was denied. Subsequently, the applicant filed an appeal to the Administrative Appeals Office (AAO), which was dismissed. The applicant filed a motion to reopen and reconsider pursuant to the terms of the *Northwest Immigrant Rights Project (NWIRP) Settlement Agreement.* The motion was granted and the application approved on December 7, 2010. On August 5, 2013, the director issued a Notice of Intent to Terminate Status (NOIT) to the applicant. On September 11, 2013, the director issued a Notice of Termination (NOT) terminating the applicant's temporary resident status. The matter is now before the AAO the on appeal. The appeal will be dismissed.

We will consider the applicant's claim *de novo*, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.2(d)(6).[1] We consider all pertinent evidence in the record, including new evidence properly submitted on appeal.

In the NOT, the director determined that the applicant failed to establish by a preponderance of the evidence that he continuously resided in the United States in an unlawful status from January 1, 1982 through the date his application was filed. The director stated that in the applicant's sworn testimony on his Form I-687 application, signed under penalty of perjury, the applicant stated that he returned to Venezuela to work in July of 1984 and returned to the United States in October of 1986. The director stated that the applicant's Social Security records supported the applicant's testimony. The director determined that this absence constitutes a substantial break in the applicant's continuous residence and physical presence and cannot be considered merely a *brief*, *casual*, and *innocent absence*.

On appeal, the applicant asserts that he has met the three requirements pursuant to the terms of the *NWIRP*.[2] The applicant submits a brief, a copy of a letter from , a copy of the first page of his 1985 and 1986 tax returns, and copies of previously submitted documents.

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

[1] 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).

[2] It is noted that on appeal the applicant addresses whether he is eligible under *NWIRP*. The record reflects that the applicant was previously found to be a *NWIRP* class member, and that the application be adjudicated in accordance with the standards set forth in the Stipulation of Settlement. Therefore, the issue will not be addressed.

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).

For purposes of establishing residence and physical presence, the term "until the date of filing" in 8 C.F.R. § 245a.2(b)(1) 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. 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 continuously resided in the United States for the duration of requisite period of time. The applicant's Form I-687 indicates that the applicant returned to Venezuela to work in July 1984 and that he returned to the United States in October 1986.

On appeal, the applicant submits a copy of a letter from the [redacted] reflects that the company provided service to the applicant at [redacted] Tampa, Florida from October 1981 through February 1987, which is consistent with the applicant's residence indicated on his Form I-687. While the letter indicates that the applicant received utility services during this time, it fails to indicate that the applicant was physically present in Florida for the duration of the reference time period. In fact, by the applicant's own admission on his Form I-687, he was working in Venezuela in July of 1984 through October of 1986. The applicant does not explain or address this inconsistency in his brief. The copies of the applicant's 1985 and 1986 tax returns only includes the first page of each return and does not indicate that the returns were ever filed. The record also contains the applicant's Social Security records, which indicate that the applicant did not receive any earnings in the years 1985 through 1989.

It is incumbent upon the applicant to resolve any inconsistencies in the record by independent, objective evidence pointing to where the truth lies. 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 above contradictions undermine the credibility of the applicant's claim of continuous residence in the United States during the requisite period. The evidence of record does not indicate that applicant's claim of continuous residence is probably true.

Also, on appeal, the applicant asserts that the director erred in making sure that the applicant was properly served both the NOIT and NOT. The applicant contends that the director "did not follow the regulation governing notices of termination of an alien's resident status codified at 8 C.R.F. § 245a.2(u)(2)(i) Termination of an alien's resident status will be made by certified mail directed to his/her last known address." The applicant states that the notices were sent to his old address of [redacted] via regular mail instead of certified mail. The applicant submits a copy of a USCIS change of address [redacted] confirmation, dated January 14, 2013. The record reflects that the director sent the notices to the applicant's old address, but that the notices were forwarded to the applicant's current address. As the applicant had notice and he responded to both the NOIT and NOT, it will be considered harmless error as the applicant's responses were considered and incorporated into the record.

Further, the applicant claims that the director utilized the applicant's application to adjust status as an opportunity to revisit his eligibility for temporary resident status. Pursuant to the regulations under 8 C.R.F. § 245a.2(u)(1)(i), an alien's temporary resident status may be terminated upon the determination that the alien was ineligible for temporary residence under section 245A of this Act. Here, the director determined that the applicant failed to establish his continuous residence due to his prolonged absence from 1984 to 1986. Therefore, the director did not err and acted accordingly within his authority under the regulations.

Based upon the foregoing, 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. The director's termination is affirmed.

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