



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: MAR 21 2014

OFFICE: HOUSTON DISTRICT OFFICE

[Redacted]

IN RE:

[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:

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The 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) on January 23, 2004, and *Felicity Mary Newman, et al. v. United States Citizenship and Immigration Services, et al.*, CIV. NO. 87-4757-WDK (C.D. Cal) on February 17, 2004 (CSS/Newman Settlement Agreements), was initially approved. The applicant's temporary resident status was subsequently terminated by the District Director in Houston, Texas. The case is now on appeal before the Administrative Appeals Office (AAO). The appeal will be sustained.

The district director's termination decision was based on the finding that the applicant failed to establish her continuous residence in the United States during the requisite period to qualify for temporary resident status.

On appeal, the applicant asserts that the district director improperly terminated her temporary resident status because the evidence of record establishes her qualifying U.S. residence.

Applicants for temporary resident status under section 245A of the Immigration and Nationality Act (the Act) must establish their entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status from before January 1, 1982 through the date the application is filed. See section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2). Applicants must also establish their continuous physical presence 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 filing date of the application. See 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 the regulation at 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 from May 5, 1987 to May 4, 1988. See CSS Settlement Agreement, paragraph 11 at page 6; Newman Settlement Agreement, paragraph 11 at page 10.

An applicant for temporary resident status has the burden to establish by a preponderance of the evidence that he or she 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. See 8 C.F.R. § 245a.2(d)(5).

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.

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 (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.

The regulations provide an illustrative list of documents – which includes affidavits and “any other relevant document” – that an applicant may submit as evidence of continuous residence in the United States during the requisite period under section 245A of the Act. *See* 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The applicant is a citizen of Mexico who claims to have lived in the United States since 1981. She filed her application for temporary resident status under section 245A of the Act (Form I-687), together with a Form I-687 Supplement, CSS/Newman (LULAC) Class Membership Worksheet, on September 8, 2005. On her Form I-687 the applicant asserted that she entered the United States in October 1981 and since then had lived continuously in Houston, Texas, at six different addresses up to 2005. As evidence of her residence and physical presence in the United States during the requisite time periods in the 1980s the applicant submitted 13 affidavits from friends and relatives who stated that they resided in Houston during the 1980s and interacted with the applicant there – some as early as 1981, others starting in 1982, 1983, 1984, and 1985, and one as late as 1988. On November 15, 2007, the United States Citizenship and Immigration Services (USCIS) approved the application.

Five years later, on November 8, 2012, the district director, sent the applicant a Notice of Intent to Terminate (NOIT) her temporary resident status. In the NOIT the district director reviewed the 13 affidavits in the record, noted several discrepancies, and concluded that the affidavits lacked specificity and documentary support. The applicant was given 33 days to submit rebuttal evidence to establish her continuous residence and physical presence in the United States during the requisite time periods during the 1980s. The applicant responded to the NOIT by submitting a personal affidavit and four additional affidavits from Houston residents, three of whom stated that they had known and interacted with the applicant in Houston since 1981 and the fourth since 1985.

On August 26, 2013, the district director issued a decision, terminating the applicant's temporary resident status. In his decision the district director reviewed the four new affidavits and determined that they added conflicting information to the record rather than clarifying previously submitted evidence. The district director concluded that the affidavits of record, taken as a whole, failed to establish that the applicant entered the United States before January 1, 1982, and thereafter resided continuously in the United States during the qualifying period which ran through May 4, 1988.

The applicant filed a timely appeal, Form I-694, on September 24, 2013, which was supplemented shortly thereafter by another affidavit from the applicant. The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOL*, 381 F.3d 143, 154 (3d Cir. 2004).

After reviewing the entire record – including all of the affidavits from the applicant, family members, and friends – the AAO comes to a different conclusion than that of the district director. Applying the preponderance of the evidence standard to the documentation of record, the AAO is

persuaded that the applicant more likely than not entered the United States before January 1, 1982, continuously resided in the United States from before January 1, 1982 through May 4, 1988, and was continuously physically present in the United States from November 6, 1986 through May 4, 1988, as required under sections 245A(a)(2) and (3) of the Act and 8 C.F.R. § 245a.2(b)(1) to qualify for temporary resident status. Accordingly, the decision of the district director terminating the applicant's temporary resident status will be withdrawn, and the application for temporary resident status is approved.

The burden of proof in these proceedings rests solely with the petitioner. *See* section 291 of the Act, 8 U.S.C. § 1361 (2012); *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). That burden has been met in this action.

ORDER: The appeal is sustained. The Notice of Termination issued on August 26, 2013, by the District Director in Houston, Texas, is withdrawn. The application for temporary resident status is approved.