



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF T-W-

DATE: JUNE 1, 2016

APPEAL OF HOUSTON, TEXAS FIELD OFFICE DECISION

APPLICATION: FORM I-687, APPLICATION FOR STATUS AS A TEMPORARY RESIDENT UNDER SECTION 245A OF THE IMMIGRATION AND NATIONALITY ACT

The Applicant, a native and citizen of Poland, seeks status as a temporary resident. *See* Immigration and Nationality Act (the Act) § 245A, 8 U.S.C. § 1255(a), and the settlement agreement in *Northwest Immigrant Rights Project, et al. vs. U.S. Citizenship and Immigration Services, et al.*, 88-CV-00379 JLR (W.D. Was) September 9, 2008 (NWIRP Settlement Agreement). The Immigration Reform and Control Act of 1986 created a legalization program under section 245A of the Act, which allows eligible foreign nationals who entered the United States before January 1, 1982, and who continuously resided and were physically present in the United States during specified time periods, to adjust status to temporary residence, if they are admissible to the United States and have not been convicted of a felony or three or more misdemeanors in the United States. The application period for temporary resident status ended on May 4, 1988. However, under the terms of the NWIRP Settlement Agreement, eligible individuals who were turned away when they attempted to apply for legalization during the initial application period, or whose applications were denied for certain reasons, may also adjust status to temporary residence.

The Field Office Director, Houston, Texas, denied the application. The Director concluded that the Applicant had not established his entry before January 1, 1982, and his continuous unlawful residence and continuous physical presence in the United States during the requisite period.

The matter is now before us on appeal. In the appeal, the Applicant asserts that the Director's denial violates the terms of the NWIRP Settlement Agreement by not considering the passage of time and difficulties in obtaining corroborative documentation of unlawful residence, that the Director applied a higher burden of proof than that allowed under the law, and that the Director addressed irrelevant matters while disregarding explanations of certain concerns.

On appeal, the Applicant, through counsel, requests oral argument. The regulation at 8 C.F.R. § 103.3(b) provides that the affected party must explain in writing why oral argument is necessary. U.S. Citizenship and Immigration Services (USCIS) has the sole authority to grant or deny a request for oral argument and will grant such argument only in cases that involve unique factors or issues of law that cannot be adequately addressed in writing. The Applicant asserts that because the case is complex, with a large record, oral argument will allow him to better address USCIS concerns. In this case, the record,

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consists mainly of the Applicant's Form I-687 applications and accompanying evidence. The issues presented are similar to eligibility issues addressed in other legalization applications. Therefore, we do not find this matter warrants oral argument. Consequently, the request is denied.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

The Applicant is seeking to adjust status to that of a temporary resident. Section 245A of the Act provides:

(a) Temporary Resident Status.-The Attorney General [now Secretary of the Department of Homeland Security (Secretary)] shall adjust the status of an alien to that of an alien lawfully admitted for temporary residence if the alien meets the following requirements:

....

(2) Continuous unlawful residence since 1982.-

(A) In general.-The alien must establish that he entered the United States before January 1, 1982, and that he has resided continuously in the United States in an unlawful status since such date and through the date the application is filed under this subsection.

(B) Nonimmigrants.-In the case of an alien who entered the United States as a nonimmigrant before January 1, 1982, the alien must establish that the alien's period of authorized stay as a nonimmigrant expired before such date through the passage of time or the alien's unlawful status was known to the Government as of such date.

....

(3) Continuous physical presence since enactment.-

(A) In general.-The alien must establish that the alien has been continuously physically present in the United States since the date of the enactment of this section.

(B) Treatment of brief, casual, and innocent absences.- An alien shall not be considered to have failed to maintained continuous physical presence in the United States for purposes of subparagraph (A) by virtue of brief, casual, and innocent absences from the United States.

....

(4) Admissible as immigrant.-The alien must establish that he-

(A) is admissible to the United States as an immigrant

The Applicant has the burden of proving by a preponderance of credible evidence that he 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 regulations at 8 C.F.R. § 245a.2(d) provide:

(5) *Burden of proof.* An alien applying for adjustment of status under this part 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 under this section. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification as set forth in paragraph (d) of this section.

(6) *Evidence.* The sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony. In judging the probative value and credibility of the evidence submitted, greater weight will be given to the submission of original documentation.

The regulations at 8 C.F.R. § 245a.2(d)(3) provide:

(3) *Proof of residence.* Evidence to establish proof of continuous residence in the United States during the requisite period of time may consist of any combination of the following:

(i) Past employment records, which may consist of pay stubs, W-2 Forms, certification of the filing of Federal income tax returns on IRS Form 6166, state verification of the filing of state income tax returns, letters from employer(s) or, if the applicant has been in business for himself or herself, letters from banks and other firms with whom he or she has done business. In all of the above, the name of the alien and the name of the employer or other interested organization must appear on the form or letter, as well as relevant dates. Letters from employers should be on employer letterhead stationery, if the employer has such stationery, and must include:

(A) Alien's address at the time of employment;

(B) Exact period of employment;

- (C) Periods of layoff;
- (D) Duties with the company;
- (E) Whether or not the information was taken from official company records;
and
- (F) Where records are located and whether the Service may have access to the records.

If the records are unavailable, an affidavit form-letter stating that the alien's employment records are unavailable and why such records are unavailable may be accepted in lieu of (3)(i)(E) and (3)(i)(F) of this paragraph. This affidavit form-letter 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.

(ii) Utility bills (gas, electric, phone, etc.), receipts, or letters from companies showing the dates during which the applicant received service are acceptable documentation.

(iii) School records (letters, report cards, etc.) from the schools that the applicant or their children have attended in the United States must show name of school and periods of school attendance.

(iv) Hospital or medical records showing treatment or hospitalization of the applicant or his or her children must show the name of the medical facility or physician and the date(s) of the treatment or hospitalization.

(v) Attestations by churches, unions, or other organizations to the applicant's residence by letter which:

- (A) Identifies applicant by name;
- (B) Is signed by an official (whose title is shown);
- (C) Shows inclusive dates of membership;
- (D) States the address where applicant resided during membership period;
- (E) Includes the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery;
- (F) Establishes how the author knows the applicant; and

- (G) Establishes the origin of the information being attested to.
- (vi) Additional documents to support the applicant's claim may include:
 - (A) Money order receipts for money sent in or out of the country;
 - (B) Passport entries;
 - (C) Birth certificates of children born in the United States;
 - (D) Bank books with dated transactions;
 - (E) Letters or correspondence between applicant and another person or organization;
 - (F) Social Security card;
 - (G) Selective Service card;
 - (H) Automobile license receipts, title, vehicle registration, etc.;
 - (I) Deeds, mortgages, contracts to which applicant has been a party;
 - (J) Tax receipts;
 - (K) Insurance policies, receipts, or letters; and
 - (L) Any other relevant document.

The regulations at 8 C.F.R. § 245a.2(h) provide:

Continuous residence. (1) For the purpose of this Act, an applicant for *temporary resident status* shall be regarded as having resided continuously in the United States if, at the time of filing of the application:

- (i) No single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982 through the date the application for temporary resident status is filed, unless the alien can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed;
- (ii) The alien was maintaining a residence in the United States; and

(iii) The alien's departure from the United States was not based on an order of deportation.

(2) An alien who has been absent from the United States in accordance with the Service's advance parole procedures shall not be considered as having interrupted his or her continuous residence as required at the time of filing an application under this section.

I. ANALYSIS

The issues in this proceeding are whether the Applicant has shown that he entered the United States before January 1, 1982, and that he has continuously resided and was physically present in the United States in an unlawful status for the requisite period. The Applicant asserts that he has submitted sufficient evidence to establish his eligibility for temporary resident status. On appeal, the Applicant also asserts that the Director did not comply with the terms of the NWIRP Settlement Agreement, which requires USCIS to consider the passage of time and attendant difficulties in obtaining corroborative documentation of unlawful residence; that the Director applied a higher burden of proof to the Applicant's case than the Immigration and Naturalization Service did over 20 years ago; and that the Director did not consider the Applicant's explanations that were intended to resolve concerns with his evidence. In support of his assertions, the Applicant submits documents, including but not limited to, his statements and those of other individuals attesting to his residence in the United States, letters of from employers, property records, a timeline of events, and a copy of his 1987 passport and visa.

The Applicant states that he first entered the United States in October 1981 with a non-immigrant visa and that he remained in the United States in an unlawful status until he departed for Poland July 1987. In support of his claimed entry in 1981, the Applicant submits an affidavit from his former wife, who states that she and the Applicant entered the United States together in October 1981. The record does not include other objective supporting documentation to establish that the Applicant entered the United States before January 1, 1982. We find the Applicant has not provided sufficient evidence to show he entered the United States before January 1, 1982. In addition, the evidence the Applicant provides to support his claim of continuous residence and continuous physical presence is inconsistent. We find, therefore, that even had the Applicant established his entry before January 1, 1982, he has not established his continuous residence and continuous physical presence. We will dismiss the appeal.

A. Continuous unlawful residence since January 1, 1982, through the date of filing.

As stated above, an applicant for temporary residence 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. 8 C.F.R. § 245a.2(b)(1). For purposes of establishing residence and physical presence under the NWIRP settlement agreement, 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. NWIRP settlement agreement paragraph 8 at pp. 14-15.

The NWIRP settlement agreement provides that Forms I-687 pending as of the date of the agreement shall be adjudicated in accordance with the adjudication standards described in the settlement agreement. Under those standards, the applicant must make a *prima facie* showing that prior to January 1, 1982, the applicant violated the terms of his or her nonimmigrant status in a manner known to the government because documentation or the absence thereof (including, but not limited to, the absence of quarterly or annual address reports required on or before December 31, 1981) existed in the records of one or more government agencies which, taken as a whole, warrants a finding that the applicant was in an unlawful status prior to January 1, 1982, in a manner known to the government. It is presumed that a school or employer complied with the law and reported violations of status to the USCIS; the absence of such report in government records is not alone sufficient to rebut this presumption. Once the applicant makes such a showing, USCIS then has the burden of coming forward with proof to rebut the evidence that the applicant violated his or her status. If USCIS does not carry this burden, the settlement agreement stipulates that it will be found that the Applicant's unlawful status was known to the government as of January 1, 1982. With respect to individuals who obtained their status by fraud or mistake, the Applicant bears the burden of establishing that he or she obtained lawful status by fraud or mistake.

The issue in these proceedings is whether the Applicant has shown that he entered the United States before January 1, 1982, and that he has continuously resided and was physically present in the United States in an unlawful status for the requisite period of time. The Applicant has the burden of proving the above by a preponderance of the evidence. 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).

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'r 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.

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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 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 Applicant has submitted the following evidence to establish that he entered the United States before January 1, 1982, and continuously resided in the United States in an unlawful status through May 4, 1988: his affidavit attesting to his residence and employment in [REDACTED] and [REDACTED] during the 1980s¹; a letter of employment from [REDACTED] a letter from [REDACTED] the granddaughter of a woman the Applicant worked for during weekends between 1981 and 1989; a statement from [REDACTED] indicating that she first met the Applicant at a picnic in [REDACTED] in the summer of 1982; fill-in-the-blank affidavits from three individuals, each stating that the Applicant resided in [REDACTED] between 1981 and 1987, and in [REDACTED] from 1987 through 1991; a letter from [REDACTED] stating that the Applicant used his travel service to send money to Poland from 1981 to 1987; and an unsigned letter from [REDACTED] indicating that the Applicant used the services of his travel agency to remit money to Poland from 1986 through 1992. The record also includes sworn statements from [REDACTED] and contact information for some of the affiants; and an affidavit from a former [REDACTED] who attests to general policies and procedures for issuing tourist visas in Eastern Europe during the late 1980s. In addition, the Applicant submits a copy of a property transfer deed indicating that he purchased property in [REDACTED]

On appeal, the Applicant states that he has proven his eligibility for temporary resident status by a preponderance of the evidence. The Applicant also asserts that in support of the instant Form I-687 application filed in 2009, he submitted letters and affidavits that are more detailed than what he previously provided.² Although the Applicant asserts on appeal that the Director improperly applied a higher burden proof, requiring clear and convincing evidence instead of a preponderance of the evidence, we do not find the record to reflect such an error. The Director's denial decision analyzes the relevant evidence and addresses the Applicant's responses to evidentiary questions first raised in a notice of intent to deny, while expressly stating that the Applicant bears the burden of proving his entry before January 1, 1982, by a preponderance of the evidence. The Applicant has not shown how the Director instead misapplied the higher, clear and convincing evidence, burden of proof.

On appeal, the Applicant also states that his evidence establishes his continuous unlawful residence. He states that the sworn statement of [REDACTED] owner of [REDACTED] is an example of a "service company letter" described by the regulations, and as a sworn statement it should be afforded more probative value and weight than a letter; that the 2009 affidavit from [REDACTED] meets the requirements of a letter of employment and is sufficient to establish his

¹ In his affidavit the Applicant states that many of the individuals who could have provided affidavits have died, and he has lost contact with another individual who moved away.

² The record also includes a Form I-687 that the Applicant filed in 2005, which was denied in September 2005.

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residence and employment from 1981; that the affidavit from [REDACTED] also proves his residence; that the affidavit of his former wife, which states that she entered the United States with him in October 1981, is verifiable.

In his affidavit dated December 14, 2014, the Applicant attests that in October 1981 he entered the United States as a nonimmigrant and violated the terms of his nonimmigrant visa by working without authorization. The Applicant claims that his passport and Form I-94, Arrival/Departure Record, were lost. However, he does not provide secondary evidence of his entry, such as a copy of his travel itinerary or evidence from an airline, to support his claim that he entered the United States in October 1981. The Applicant states in his last affidavit that when he returned to Poland in July 1987, the Polish authorities confiscated his old passport, because he was returning from the United States. He also states that he did not return to the United States using that passport; he obtained a new passport on August 1, 1987, and a B-2 visa on August 10, 1987, and returned to the United States on September 10, 1987.

We find that the Applicant has not established his entry in October 1981. The record lacks evidence to support the Applicant's claim, and that of his former spouse, that he entered the United States in October 1981. The Applicant states that the passport he used to travel to the United States in October 1981 and to return to Poland in 1987 was lost; he then explains it was confiscated by the Polish officials. In support of his claimed 1981 entry, the Applicant relies on declarations from witnesses, including his former wife, who attests to having entered the United States with the Applicant in October 1981 with a nonimmigrant visa. However, the Applicant has not provided other corroborative evidence, such as his wife's passport evidence or travel records, to support statements concerning his claimed 1981 entry.

Also, the Applicant has not established his continuous unlawful residence since January 1, 1982, through the date of filing his application. In the Applicant's December 14, 2014, affidavit, as in his December 16, 2003, sworn statement, he stated that upon arriving in the United States, he first lived in [REDACTED] New Jersey, working for [REDACTED] in [REDACTED] from 1981 through 1998. However, he stated in his December 16, 2003, sworn statement, that he and his wife arrived in the United States together as tourists in October 1981 and that his wife lived in [REDACTED] with [REDACTED]. He states that when his wife became pregnant in 1982 she returned to Poland, he remained in the United States to work, he sent money home through a personal courier service, and that after saving money from working in the United States between 1981 and 1987, he returned to Poland "for good." After his arrival he states that he learned that his wife had left him and he decided to return to the United States.

Contrary to the Applicant's assertions, his December 2014 affidavit does not establish his residences in the United States during the requisite period. We indicated in our December 25, 2009, dismissal decision that evidence of the Applicant's residence was conflicting. In his previously filed Form I-687, the Applicant stated he resided in [REDACTED] from 1981 through 1987 and in [REDACTED] from 1987 through 1991, and he had provided affidavits to support that assertion. At his interview in March 2005, however, the Applicant stated that when he first came to the United States he lived in [REDACTED] for four to five years, then moved to [REDACTED]. The Applicant's previously filed

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Form I-687 also indicates that he lived in [REDACTED] from 1981 through 1987, and then in [REDACTED] New Jersey, from 1987 to 1988. In his December 14, 2014, affidavit, the Applicant states that before 1988, he lived mainly at the home of [REDACTED] at [REDACTED] in [REDACTED] and from March 1988 at [REDACTED] in [REDACTED].

Also, the evidence provided does not establish the Applicant's continuous unlawful residence in the United States for the duration of the requisite period, because the witness affidavits and letters are contradicted by other evidence in the record. For example, although the witness affidavits contain statements that the affiants have known the Applicant for several years and attest to his having been physically present in the United States during the required period and to his residence in [REDACTED] from 1987 through 1991, the Applicant's Form G-325A, Biographic Information, submitted in connection with the Form I-130, Petition for Alien Relative, filed on his behalf, he states he resided in [REDACTED] from September 1987 to November 1998. This document does not indicate that he resided in [REDACTED] at any time. While the Applicant attempts to resolve this discrepancy by stating he spent time in both cities, the discrepancy casts doubt on whether the affidavits and letters provided are genuine. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality; 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.

Although affidavits alone may be enough to establish the requisite continuous unlawful residence, as discussed below, the witnesses statements provided are not probative and therefore, do not suffice to establish the Applicant's residence throughout the requisite period. To be considered probative and credible, witness affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Upon review, even considering the passage of time, we find that the witness statements are of limited probative value, because the Applicant has not established that their assertions are probably true.

The Applicant does not explain these inconsistencies, which have a direct bearing on proving his residence in the United States during the requisite period. 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. 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. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In addition, contrary to the Applicant's assertion, the letters of employment from [REDACTED] and the granddaughter of [REDACTED] attesting to the Applicant's employment during the requisite period do not meet the requirements for letters of employment. The regulatory standards set forth at 8 C.F.R. § 245a.2(d)(3)(i) provide 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 USCIS may have access to the records. As these declarations do not include several of these required facts, they are afforded minimal weight as evidence of the Applicant's residence in the United States for the duration of the requisite period.

We find the evidence provided, taking into consideration the period of time since the Applicant's claimed entry in 1981 and the difficulty the Applicant may have had in procuring documentation to support the declarations he has provided, do not establish the requisite continuous residence.

B. Continuous residence in an unlawful status since January 1, 1982

The Applicant must also establish that he has continuously resided in the United States in an unlawful status since January 1, 1982, and through the date of the application. The Applicant shall be regarded as having resided continuously in the United States if at the time the application for temporary resident status is considered filed, no single absence from the United States has exceeded 45 days, and the aggregate of all absences has not exceeded 180 days during the requisite period, unless the Applicant can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the Applicant was maintaining a residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.2(h).

Assuming that the Applicant had shown that he arrived in the United States as a non-immigrant before January 1, 1982, it appears that he had a prolonged absence that interrupted any continuous unlawful residence he may have established. The Applicant has not submitted objective evidence to establish the facts and timing surrounding his claimed return to Poland in 1987 to support a finding that he did in fact arrive in Poland in July 1987. *See e.g. Espinoza-Gutierrez v. Smith*, 94 F.3d 1270 (9th Cir. 1996) (legalization applicant's absence would not break continuous physical presence if the absence was brief, casual, and innocent, as defined by the court in *Rosenberg v. Fleuti*, 374 U.S. 449 (1963)). The Applicant stated that he returned to Poland "for good" and has not provided corroborative evidence establishing the duration of that trip. We find that the Applicant's absence from the United States, in the event he had shown his first entry was before 1987, was not brief, casual, and innocent, because the record indicates that he had returned to Poland for the purpose of living there permanently.

Therefore, based upon the foregoing, the Applicant has not established 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*.

C. Continuous physical presence since November 6, 1986, through the date of the application

The Applicant must also establish that he or she has been continuously physically present in the United States since November 6, 1986. 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)(2). An applicant who was outside of the United States on the date

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of enactment or departed the United States after enactment may apply for legalization if he reentered prior to May 1, 1987, provided he meets the continuous residence requirement, and is otherwise eligible for legalization. *See* 8 C.F.R. § 245a.1(f). An absence during this period which is found to be brief, casual, and innocent shall not break a legalization applicant's continuous physical presence. Section 245A(a)(3)(B) of the Act, 8 U.S.C. § 1255a(a)(3)(B).

We find that even had the Applicant established his entry before January 1, 1982, his continuous unlawful residence since January 1, 1982, and his return to Poland in 1987, the Applicant's absence from the United States in this case was not brief, casual, and innocent, in that the record indicates that he returned to Poland for the purpose of living there permanently. The Applicant stated that in July 1987, he returned to Poland "for good" to resume his life there. As the Applicant claimed he departed the United States to resume his life in Poland, his absence disrupted any continuous residence he may have established.

Accordingly, the Applicant has not demonstrated that he was continuously physically present in the United States during the statutory period.

II. CONCLUSION

Therefore, based upon the foregoing, the Applicant has not established 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.

ORDER: The appeal is dismissed.

Cite as *Matter of T-W-*, ID# 14570 (AAO June 1, 2016)