



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

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

MATTER OF O-S-S-

DATE: SEPT. 13, 2016

APPEAL OF LOS ANGELES, CALIFORNIA FIELD OFFICE DECISION

APPLICATION: FORM I-698, APPLICATION TO ADJUST STATUS FROM TEMPORARY TO PERMANENT RESIDENT (UNDER SECTION 245A OF THE INA)

The Applicant, a native and citizen of Mexico, seeks to adjust from temporary resident to lawful permanent resident (LPR) status. *See* Immigration and Nationality Act (the Act) section 245A, 8 U.S.C. § 1255a. Foreign nationals who have continuously resided in the United States since they were granted temporary resident status under section 245A of the Act may adjust to lawful permanent resident status, if they are admissible to the United States, have not been convicted of a felony or three or more misdemeanors in the United States, and can demonstrate basic citizenship skills.

The Field Office Director, Los Angeles, California denied the application, concluding that the Applicant was not eligible to adjust status to that of a permanent resident, because his temporary resident status had been terminated.

The matter is now before us on appeal. In the appeal, the Applicant submits a personal affidavit and claims that the Director erred by not considering all the evidence that he presented to establish eligibility for temporary resident status.

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

I. LAW

The Applicant is seeking a review of his temporary status termination, as well as denial of his application to adjust status from temporary to permanent resident. Pursuant to 8 CFR § 245a.3(b), an applicant who has been lawfully admitted for temporary resident status under section 245A(a) of the Act may apply for adjustment of status to permanent residence as long as the applicant's temporary status has not been terminated.

To be eligible for adjustment from temporary to permanent resident under section 245A of the Act, an applicant must apply for such adjustment no later than 43 months from the date of the grant of temporary resident status. Section 245A of the Act provides, in pertinent part:

(b) Subsequent Adjustment to Permanent Residence and Nature of Temporary Resident Status.-

(1) Adjustment to permanent residence.-The [Secretary of Homeland Security] shall adjust the status of any alien provided lawful temporary resident status under subsection (a) to that of an alien lawfully admitted for permanent residence if the alien meets the following requirements:

(A) Timely application after one year's residence.-The alien must apply for such adjustment during the 2-year period beginning with the nineteenth month that begins after the date the alien was granted such temporary resident status. . .

(f) Administrative and Judicial Review.-. . . .

(2) No review for late filings.-No denial of adjustment of status under this section based on a late filing of an application for such adjustment may be reviewed by a court of the United States or of any State or reviewed in any administrative proceeding of the United States Government.

The regulations at 8 C.F.R. § 245a.3(c)(3) further explain that an applicant who was previously granted temporary resident status pursuant to section 245A(a) of the Act who has not filed an application for permanent resident status under section 245A(b)(1) of the Act by the end of 43 months from the date of actual approval of the temporary resident application is ineligible for adjustment of status from temporary to permanent resident.

With regard to eligibility for temporary resident status, section 245A of the Act provides:

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

(1) Timely application.-

(A) During application period.-Except as provided in subparagraph (B), the alien must apply for such adjustment during the 12-month period beginning on a date (not later than 180 days after the date of enactment of this section) designated by the [Secretary of Homeland Security].

(B) Application within 30 days of show-cause order.-An alien who, at any time during the first 11 months of the 12-month period described in subparagraph (A), is the subject of an order to show cause issued under section 242 (as in effect before October 1, 1996), must make application under this section not later than the end of the 30-day period beginning

either on the first day of such 12-month period or on the date of the issuance of such order, whichever day is later.

(C) Information included in application.-Each application under this subsection shall contain such information as the [Secretary] may require, including information on living relatives of the applicant with respect to whom a petition for preference or other status may be filed by the applicant at any later date under section 204(a).

(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.

....

(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.

The regulations at 8 C.F.R. § 245a.3(c)(5) include, as “ineligible aliens,” foreign nationals whose temporary resident status has been terminated under 8 C.F.R. §245a.2(u). The regulations at 8 § C.F.R. 245a.2(u)(1) further provide:

Termination of temporary resident status; General. The status of an alien lawfully admitted for temporary residence under section 245A(a)(1) of the Act may be terminated at any time in accordance with section 245A(b)(2) of the Act. It is not necessary that a final order of deportation be entered in order to terminate temporary resident status. The temporary resident status may be terminated upon the occurrence of any of the following:

(i) It is determined that the alien was ineligible for temporary residence under section 245A of this Act. . . .

II. PROCEDURAL HISTORY AND EVIDENCE OF RECORD

The Applicant applied for temporary resident status in 2005. In support of his claim that he entered the United States before January 1982 and continuously resided in the United States in an unlawful

Matter of O-S-S-

status through May 4, 1988, the Applicant submitted six affidavits. Of the affidavits submitted, one attests to the Applicant's presence in the United States since 1981, and the remaining five attest to the Applicant's residence in the United States from 1982 to 2005. In March of 2011, the Director sent the Applicant a notice of intent to deny (NOID) the Form I-687 based on inconsistencies in the record regarding his entry into the United States before January 1, 1982, and continuous residence in the United States during the requisite statutory period. The Applicant did not respond to the NOID. On April 27, 2011, the Director denied the Form I-687, based on insufficient evidence of eligibility. However, on the same day an approval notice was generated and sent to the Applicant. The approval notice advised the Applicant that he had to apply for adjustment from temporary to permanent status before the end of the 43-month period from the date of approval. However he did not file Form I-698 until July 13, 2015.

In 2015 the Director sent the Applicant a notice of intent to terminate (NOIT) the Applicant's temporary resident status based on inconsistencies in the record regarding his entry into the United States and his continuous residence during the requisite statutory period. The Applicant did not respond to the NOIT. In 2016 the Director terminated the Applicant's temporary resident status, upon concluding that the evidence was insufficient to support the Applicant's claim of entry and unlawful residence in the United States since before January 1, 1982, until the date he attempted to apply for legalization, and determining, therefore, the Applicant had been granted temporary resident status in error. The Director subsequently denied the Applicant's Form I-698 based upon the termination of his temporary resident status.

III. ANALYSIS

The issues on appeal are whether the Applicant submitted sufficient evidence to establish that he resided in the United States in an unlawful status as of January 1, 1982, and whether the termination of the Applicant's temporary resident status was therefore in error. In addition, if the termination was in error, we must determine whether the Applicant is eligible to adjust status from temporary to permanent resident.

A. Form I-687 Eligibility

In the appeal, the Applicant claims that the Director erred by not considering all the evidence that he submitted to establish his eligibility for temporary resident status. In the NOID, the Director determined that none of the affidavits in the record provided information about the Applicant's continuous residence in the United States.

The Applicant has submitted the following affidavits as the only evidence to establish that he entered the United States before January 1982, and continuously resided in the United States in an unlawful status through May 4, 1988:

- An affidavit from [REDACTED] who states that he has known the Applicant since 1981 and considers him to be a good friend

(b)(6)

Matter of O-S-S-

- An affidavit from [REDACTED] stating that she met the Applicant in 1982. The affiant also states that she and the Applicant attended gatherings together and had common friends. She further states that she has firsthand knowledge of the Applicant living at different addresses and speaks of his good character.
- An affidavit from [REDACTED] who states that he became friends with the Applicant in 1984 and that they frequently spent time with each other's families
- An affidavit from [REDACTED] who states that she became friends with the Applicant in 1986 and that they frequently spent time with the Applicant and his family
- An affidavit from [REDACTED] who states that she has been an acquaintance of the Applicant since 1985
- A letter from [REDACTED] who states that he met the Applicant in 1986 at a fundraising event and that they have been friend since that time

Of the affidavits submitted, only one attests to the Applicant's presence in the United States before January 1982. The remaining affidavits attest to the Applicant's presence between an unspecified date in 1982 and 1986. However, none of the affiants provide information regarding where the Applicant resided during their acquaintance with him. In addition, only one of the affidavits indicates how the affiant and the Applicant met. None of the affidavits contain proof that the affiants themselves were present in the United States during the relevant time 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.

We find that the affidavits in the record do not contain sufficient and verifiable details to be deemed probative or credible. While affidavits may be submitted as evidence, when they are the sole evidence to be considered by an adjudicator, they must be clear, credible, consistent, and relevant. The affidavits submitted do not meet this criteria as they lack the required details. In addition, the Applicant has not submitted additional evidence on appeal to overcome the Director's finding regarding the insufficiency of his evidence. The Applicant's unsupported statements in his affidavit will not suffice to meet his burden of proof to establish his continuous residence in the United States from before January 1, 1982.

Accordingly, we find that the Applicant has not established eligibility for temporary resident status pursuant to section 245A of the Act. We therefor find that the record reveals no error in the termination of the Applicant's Form I-687.

B. Form I-698 Eligibility

As stated earlier, the record reflects that the Applicant was granted temporary resident status on April 27, 2011. Accordingly, the 43-month eligibility period for filing for adjustment of status expired on November 27, 2014. The Applicant did not file Form I-698 until July 13, 2015, more

Matter of O-S-S-

than 1 year after the 43-month application period. No statutory provision permits administrative review of denials of adjustment of status under section 245A of the Act based on a late filing.

IV. CONCLUSION

The Applicant has the burden of proving eligibility for adjustment of status from temporary to permanent resident. Section 291 of the Act, 8 U.S.C. § 1361. Here, the Applicant is not eligible to adjust status to that of a permanent resident because his temporary resident status had been terminated. Accordingly, we dismiss the appeal. This decision constitutes a final notice of ineligibility.

ORDER: The appeal is dismissed.

Cite as *Matter of O-S-S-*, ID# 11818 (AAO Sept. 13, 2016)