

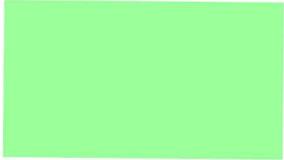


**U.S. Citizenship  
and Immigration  
Services**

(b)(6)

DATE: OCT 15 2014

OFFICE: HOUSTON

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:**

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 field office director in Houston, Texas (director). The case is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

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. 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. 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. 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. 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. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

In this case the application for temporary resident status was filed on July 30, 2004, and approved on May 13, 2008. On August 14, 2013, the director issued a Notice of Intent to Terminate (NOIT) the applicant's temporary resident status on the ground that the previously submitted evidence, including affidavits and interview testimony, contained numerous inconsistencies which cast doubt on the applicant's claimed date of entry into the United States, her departures from the country, and her continuous residence in the United States during the requisite period. The applicant responded to the NOIT with three additional affidavits.

On November 14, 2013, the director issued a Notice of Termination of the applicant's temporary resident status. The director discussed the three new affidavits – two from individuals who stated that they had known the applicant in the United States since January 1984 and January 1986, respectively, and the third from an individual who referred to three affidavits previously submitted by his grandmother who claimed to have known the applicant in the United States since 1981 or 1982 and who passed away in 2010. The director determined that the newly submitted affidavits did not overcome the grounds for terminating the applicant's temporary resident status. The director concluded that the applicant had failed to establish by a preponderance of the evidence that she entered the United States before January 1, 1982, and resided in the United States thereafter in continuous unlawful status until her attempt to file for legalization (during the original application period from May 5, 1987 to May 4, 1988). Accordingly, the applicant's temporary resident status was terminated.

On December 16, 2013, the applicant filed a timely Form I-694, Notice of Appeal. The Form I-694 contains a box directing the applicant to summarize the reasons for the appeal, “includ[ing] a statement explaining any error or conclusion of law in the decision being appealed or any erroneous statement of fact” in the decision. In response to this instruction the applicant stated that U.S. Citizenship and Immigration Services (USCIS) failed to prove that her testimony was not credible and that she did not meet the burden of proof. The applicant stated that a brief would be filed within 30 days. No such materials were submitted within 30 days, however, and no further communication has been received from the applicant up to the date of our decision.

The regulation at 8 C.F.R. § 103.3(a)(3)(iv)(A) provides that “[a]ny appeal which is filed that [f]ails to state the reason for appeal . . . will be summarily dismissed.”

In this case the applicant has not stated any reason for the appeal. While contesting the director's findings, the applicant has not identified any erroneous conclusion of law or any erroneous statement of fact in the director's decision. The applicant has not submitted any additional evidence to be considered on appeal. In accordance with 8 C.F.R. § 103.3(a)(3)(iv)(A), therefore, the appeal will be summarily dismissed.

**ORDER:** The appeal is dismissed. The Notice of Termination, dated November 14, 2013, is affirmed. This decision constitutes a final notice of ineligibility.