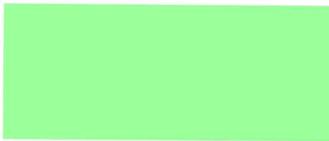


(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



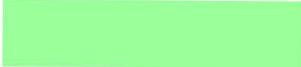
U.S. Citizenship
and Immigration
Services



DATE: **OCT 17 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", written over the "Thank you," text.

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 its 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).

The applicant’s application for temporary resident status was filed on May 11, 2005, and approved on July 17, 2008.

On November 7, 2012, the director issued a Notice of Intent to Terminate (NOIT) the applicant's temporary resident status. In the NOIT the director reviewed all previously submitted documentation including the contents of the instant Form I-687 vis-à-vis an earlier Form I-687 filed in 1991, the applicant’s testimony before an officer of the legacy Immigration and Naturalization Service (INS) in 1991, and numerous affidavits submitted from individuals who claim to have known the applicant in the United States during the 1980s. The director discussed the substantive discrepancies and/or insufficient detail that he found in these documents with regard to the applicant’s initial date of entry into the United States, his residential addresses and employment history in the United States from the late 1970s to the early 1990s, and the duration of an absence he had from the United States in 1987. The director indicated that the record contained “no credible anecdotal or documentary evidence” of the applicant’s continuous residence and continuous physical presence in the United States during the requisite time periods in the 1980s.

The applicant responded to the NOIT with a brief from counsel dated December 7, 2012. Counsel characterized the inconsistent information provided in the Forms I-687 from 1991 and 2005 and in the affidavits from 1991 and 2005-06 as “minor discrepancies” and “slight inaccuracies” caused by the lapse of time between the events recalled and the preparation of the documents. Counsel pointed out that the affidavits all contained contact information, so that Service officers had the opportunity to verify the information therein directly with the affiants. Counsel referenced the regulation that allows the submission of affidavits and any other relevant document, 8 C.F.R. § 245a.2(d)(3)(vi)(L), and cited an internal memorandum of U.S. Citizenship and Immigration Services (USCIS) advising that affidavits may be viewed as credible even if they are not accompanied by corroborating evidence. In counsel's view, USCIS did not have sufficient grounds to revoke the temporary resident status previously granted to the applicant.

On September 3, 2013, the director issued a Notice of Termination which terminated the applicant’s temporary resident status. The director discussed the response to the NOIT, referring to counsel’s brief as “his interpretation of the evidence” submitted by the applicant and “his interpretation of the events discussed in the affidavits.” The director stated that “the assertions of counsel do not constitute evidence” and noted that the applicant did not respond directly to any of the evidentiary issues discussed in the NOIT. The director found that the response to the NOIT was not sufficient to overcome the grounds for termination. The director concluded, therefore, that the applicant failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982, and thereafter resided in the United States in continuous unlawful status until the attempted

filing for legalization during the original filing period (May 5, 1987 to May 4, 1988). Consequently, the applicant's temporary resident status was terminated in accordance with 8 C.F.R. § 245a.2(u).¹

The applicant filed a timely appeal on the October 7, 2013. We conduct appellate review on a *de novo* basis. See *Soltane v. Department of Justice*, 381 F.3d 143, 145 (3d Cir. 2004).

On the Form I-694, Notice of Appeal, the petitioner did not summarize the reasons for the appeal, but indicated that a statement and/or brief would be filed within 30 days. On November 1, 2013, the applicant's counsel filed a copy of the December 7, 2012 brief that was originally filed in response to the NOIT, along with a cover letter from counsel, dated October 29, 2013, stating that the applicant "maintains that the Service is incorrect in terminating his application, which was initially approved." Thus, no new evidence has been submitted in support of the appeal. Nor has the applicant offered any personal rebuttal to the director's specific evidentiary findings that formed the basis of the decision to terminate his temporary resident status.

In the NOIT the director presented a detailed review of the documents submitted by the applicant as evidence of his residence and physical presence in the United States – including a discussion of each affidavit individually and a side-by-side comparison of the information provided on the Forms I-687 from 1991 and 2005. The director explained the reasons why, in his view, the documents were inconsistent, substantively deficient and/or insufficiently detailed, and thus failed to establish the applicant's continuous residence and physical presence in the United States during the requisite periods to make him eligible for temporary resident status under section 245A of the Act. In the Notice of Termination the director pointed out that the applicant did not offer any personal response to the evidentiary issues discussed in the NOIT. Likewise on appeal, the applicant himself has not addressed any of the specific evidentiary discrepancies and shortcomings discussed in the NOIT. Nor has any new evidence been submitted, since the only document submitted on appeal, aside from counsel's cover letter, is the same brief from counsel that was previously submitted in response to the NOIT, which was discussed by the director in his termination decision. We agree with the director that the assertions of counsel do not constitute evidence. See *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). We also agree with the director that the evidentiary discrepancies and shortcomings discussed by the director in the NOIT, in the absence of rebuttal evidence from the applicant himself, are sufficient grounds for terminating his temporary resident status. It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence. See *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Based on the foregoing analysis, we determine that the applicant has failed to establish, by a preponderance of the evidence, that he entered the United States before January 1, 1982, and that he resided continuously in the United States in an unlawful status from before January 1, 1982, and was continuously physically present in the United States from November 6, 1986, until the date of

¹ 8 C.F.R. § 245a.2(u) provides that "[t]he 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." This statutory provision provides for the "termination of temporary resident status . . . if it appears . . . that the alien was in fact not eligible for such status." Section 245A(b)(2)(A) of the Act, 8 U.S.C. § 1255a(b)(2)(A).

attempted filing for legalization during the original filing period that ended on May 4, 1988. Accordingly, the applicant is ineligible for temporary resident status under section 245A of the Act. The appeal will be dismissed.

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 not been met in this action.

ORDER: The appeal is dismissed. The Notice of Termination, dated September 3, 2013, is affirmed. This decision constitutes a final notice of ineligibility.