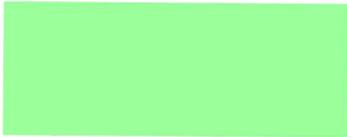


(b)(6)

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



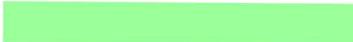
U.S. Citizenship
and Immigration
Services



DATE: OCT 17 2014

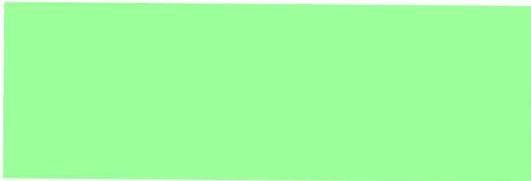
OFFICE: HOUSTON

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 "R. 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 [REDACTED] 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 March 29, 2005, and approved on April 5, 2006. On August 28, 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 of the applicant's entry and continuous residence in the United States was insufficient and contradictory. The applicant responded to the NOIT with an affidavit and additional documentation.

On November 25, 2013, the director issued a Notice of Termination of the applicant's temporary resident status. In reviewing the documentation of record, the director found that the applicant had failed to address evidentiary inconsistencies including his addresses, his travel to and from Mexico and the number of days absent from the United States, and how he was able to support himself in the United States during his periods of unemployment. The director concluded that during the requisite period of continuous U.S. residence (from before January 1, 1982 through May 4, 1988) the applicant more likely than not was in and out of the United States up to April 1985 and not in the United States at all after April 1985. The director determined that the applicant failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982, and resided in the United States thereafter in continuous unlawful status during the requisite period. Accordingly, the applicant's temporary resident status was terminated.

On December 26, 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 a brief would be filed within 30 days with supporting evidence of his presence in the United States during the requisite period under the CSS/Newman Settlement Agreements. 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. 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 25, 2013, is affirmed. This decision constitutes a final notice of ineligibility.