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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



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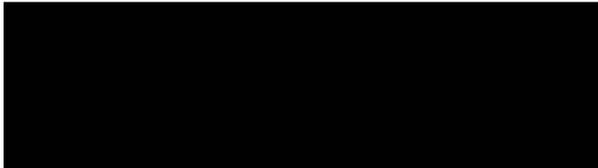
IN RE: Applicant:



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:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. You no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case. If your appeal was sustained or remanded for further action, you will be contacted.

John F. Grissom  
Acting 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) January 23, 2004, and *Felicity Mary Newman, et al., v. United States Immigration and Citizenship Services, et al.*, CIV. NO. 87-4757-WDK (C.D. Cal) February 17, 2004 (CSS/Newman Settlement Agreements) was denied by the director in Houston, Texas. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a native of Mexico who claims to have lived in the United States since April 1980, submitted a Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (Act), and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet on December 27, 2005. The director denied the application, finding that the applicant had not established by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status for the duration of the requisite period.

On appeal counsel asserts that the director did not properly evaluate the documents submitted by the applicant in support of his application. In counsel's view, the evidence of record is sufficient to establish that the applicant meets the continuous residence requirement for the requisite period. Counsel submits additional information with the appeal.

An applicant for temporary resident 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. Section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2). The applicant must also establish that he or she has been continuously physically present 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 date of filing the application. 8 C.F.R. § 245a.2(b).

For purposes of establishing residence and physical presence under the CSS/Newman Settlement Agreements, the term "until the date of filing" in 8 C.F.R. § 245a.2(b) 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. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

The applicant 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. 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).

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 or her 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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

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. See 8 C.F.R. § 245a.2(d)(6). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

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 or petitioner 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 or petition.

The issue in this proceeding is whether the applicant (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. The AAO determines that the applicant has not met his burden.

The record reflects that the applicant has provided conflicting information and documentation regarding his entry into the United States and his continuous residence in the country through the requisite period. At his legalization interview, the applicant indicated that he entered the United States in April 1980. On a prior Form I-687 dated August 28, 1990, the applicant indicated that he made three trips from the United States to Mexico during the 1980s. The trips were in April 1984, for two weeks, in July 1986 for 12 days and from May to June 1987 for three weeks. On the same form, the applicant indicated that his daughter [REDACTED] was born in Mexico in 1983, his daughter [REDACTED] was born in Mexico on January 23, 1984, and that his son

was born in Mexico on August 29, 1988. On a Form I-485 (application to register permanent residence or adjust status) the applicant filed on May 31, 2005, the applicant indicated that his daughter [REDACTED] was born in Mexico on September 30, 1982, and that his son [REDACTED] was born in Mexico on January 23, 1984. There is no evidence in the record that the applicant's wife was residing in the United States during the 1980s. The absences from the United States claimed by the applicant did not account for the conception of the applicant's children and strongly suggest that the applicant residing in Mexico when his children were conceived and not in the United States as he had claimed.

On the Form I-687 the applicant filed on December 27, 2005, the applicant indicated that he traveled to Mexico during these periods: November 1980; December 1981; April 1983; July 1986; from May to June 1987; and January 1988. None of the absences listed by the applicant on the Form I-687 dated August 28, 1990 or the Form I-687 he filed in 2005, accounted for the conception of at least the applicant's two children, [REDACTED] and [REDACTED]. Therefore it is most likely that the applicant was in Mexico during the periods of the conception of the applicant's two children, and casts some doubt on the veracity of the applicant's claim that he continuously resided in the United States from before January 1, 1982 through the requisite period.

At his legalization interview, the applicant indicated that he first entered the United States in 1980. On the Form I-687 dated August 1990, the applicant indicated in response to question # 33 (his residential address in the United States since first entry), as [REDACTED] Livingston, Texas from December 1986. The applicant did not list any other addresses during the 1980s. On the Form I-687 he filed in 2005, the applicant listed his address in the United States since entry as [REDACTED], from 1976. The discrepancies in the record regarding the applicant's first entry into the United States (1976 or 1980) and his residences in the country, casts some doubt on the veracity of his claim that he entered the United States before January 1, 1982 and resided continuously in the country through 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 without competent objective evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See id.*

The record includes two letters from [REDACTED] dated May 14, 2002 and June 10, 2003. The letters stated that the applicant was employed by [REDACTED] on a part-time basis as an agricultural worker from April 1980 to December 1989. [REDACTED] further stated that the applicant was paid in cash and that no record was kept of the applicant's employment. The employment letters do not comport with the requirements at 8 C.F.R. § 245a.2(d)(3)(i) because the author did not provide the applicant's address during the periods of employment and did not indicate whether there were periods of layoff, which seems likely since the employment was described as "part-time." Furthermore, the author indicated that no employment records were kept and that the

applicant was paid in cash, thus precluding verification by United States Citizenship and Immigration Services (USCIS). Nor were the letters supplemented by tax records from the employer demonstrating that the applicant was actually employed during any of the years indicated. Additionally, the letter from [REDACTED], secretary/office manager, dated May 24, 2004, is contrary to the two letters from [REDACTED] and the information provided by the applicant on the Form I-687 regarding his employment in the 1890s. Whereas the applicant stated that he was employed by Davis & Brown Construction Inc. as a laborer from April 1980 to December 1989, the letter from [REDACTED] indicated that the applicant was employed from January 2004. The contradictions in the documents call into question the credibility and reliability of the letters as evidence of the applicant's continuous residence in the United States during the requisite period. As previously indicated, doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See Matter of Ho, id.* Thus, the employment documents have limited probative value. They are not persuasive evidence that the applicant resided in the United States from before January 1, 1982 through the requisite period.

As discussed above, the applicant has provided conflicting information and documentation in support of his application. The applicant has not provided any objective evidence to justify or reconcile the contradictions. Therefore, the remaining documentation in the record consisting of – letters and affidavits from individuals who claim to have resided with, worked with or otherwise known the applicant during the 1980s – is suspect and not credible. Thus it must be concluded that the applicant has failed to establish his continuous residence in the United States for the requisite period.

The letters and affidavits in the record have minimalist formats very few details about the applicant's life in the United States, such as where he worked, and the nature and extent of their interaction with him over the years. Nor are the affidavits accompanied by any documentary evidence – such as photographs, letters, and the like – of the affiants' personal relationships with the applicant in the United States during the 1980s. [REDACTED] stated that the applicant resided with him at his residence from 1982 to 1986, but did not provide the address. None of the authors provided documents to establish their own identities and residence in the United States during the 1980s. In view of these substantive shortcomings, the AAO finds that the letters and affidavits have little probative value. They are not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through the requisite period.

Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that he is eligible for the benefit sought.

Therefore, based upon the foregoing, the applicant has failed to establish 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 on this basis.

**ORDER:** The appeal is dismissed. This decision constitutes a final notice of ineligibility.