

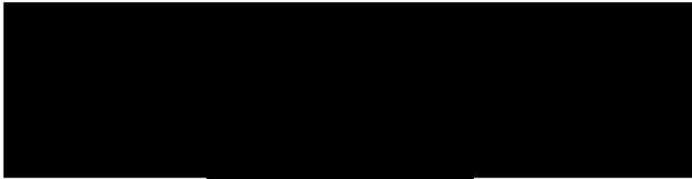


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FILE: [REDACTED] Office: LOS ANGELES
MSC-05 215 10083
MSC-07 180 10992 – APPEAL

Date: **JAN 29 2010**

IN RE: Applicant: [REDACTED]

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.

Perry J. Rhew
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 Los Angeles, California. 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 March 1981, 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 May 3, 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 periods.

On appeal counsel asserts that the director did not properly evaluate the documentation submitted by the applicant in support of his application. In counsel's view, the evidence in the record is sufficient to establish that the applicant meets the continuous residence requirement to adjust status under section 245A of the Act.

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 has furnished sufficient credible evidence to meet his burden of establishing that he entered the United States before January 1, 1982 and resided continuously in the country in an unlawful status for the duration of the requisite period. In support of his application, the applicant submitted copies of envelopes, copies of retail, merchandise and other forms of receipts, copies of Earnings Statements, as well as letters and affidavits from individuals who claim to have lived with, or otherwise known the applicant in the United States during the 1980s.

The AAO has reviewed each document in its entirety to determine the applicant's eligibility

The photocopies of envelopes which were addressed to the applicant by individuals in Durango, Mexico, at [REDACTED], have illegible postmark

dates and it is not possible to discern when the envelopes were mailed. The original envelopes are not in the file for proper verification. The envelopes do not bear a United States Postal Service date stamp or other official markings to show that the envelopes were processed in the United States before delivery to the applicant at the addresses indicated. Most importantly, the addresses on the envelopes are inconsistent with the addresses claimed by the applicant on his Form I-687. While the envelopes were addressed to the applicant at [REDACTED], the applicant did not claim such address as any of his addresses in the United States since entry.

On his Form I-687 however, the applicant indicated his addresses in the United States since entry as follows:

- [REDACTED], from March 1981 to 1988;
- [REDACTED], from 1988 to December 1993;
- and
- [REDACTED], since January 1984.

The inconsistencies between the addresses on the envelopes and the addresses claimed by the applicant on his Form I-687 cast considerable doubt on the credibility of the envelopes as evidence of the applicant residence in the United States during the requisite period, the credibility and reliability of the other documents submitted by the applicant in support of his application, as well as the veracity of the applicant's claim that he has continuously resided in the United States in an unlawful status 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. *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.*

In similar vain, the copies of the various receipts in the record – some with no name or address and some with the applicant's name and incorrect addresses – are suspect and not credible. They cannot serve as credible evidence of the applicant's continuous residence in the United States for the requisite period. For example, a copy of the United States Post Office Registered Mail Receipt with a date of July 20, 1983, has the applicant's address as [REDACTED]. As indicated above, this address is not one of the addresses claimed by the applicant as one of his addresses in the United States during the requisite period.

The photocopies of the Earnings Statements from [REDACTED] in Culver City, California, issued to the applicant for pay periods – December 17 to December 18, 1987; January 4 to January 15, 1988; and April 25 to May 6, 1988 – do not appear to be genuine, because the statements are contrary to the employer information provided by the applicant on the Form I-687.

On that form, the applicant indicated his employer from February 1987 to December 1988 as Burger King on [REDACTED]

As for the letters and affidavits in the record from individuals who claim to have lived with the applicant or otherwise known him in the United States during the 1980s, they have minimalist or fill-in-the-blank formats with very few details about the applicant's life in the United States and the nature and the extent of their interaction with him over the years. The authors do not seem to have direct a personal knowledge of the events and circumstances of the applicant's residence in the United States during the requisite period. The letters and affidavits are not supplemented by any documentary evidence – such as photographs, letters, and the like – demonstrating the authors' personal relationships with the applicant in the United States during the years they claimed to have known him.

[REDACTED] claims that he lived with the applicant at [REDACTED] from 1979 to 1981. The applicant however, indicated that he first entered the United States in March 1981. Therefore, it is implausible that [REDACTED] would have resided with the applicant in Inglewood, California in 1979. This contradiction greatly undermines the credibility of [REDACTED]'s letter as evidence of the applicant's continuous residence in the United States as well as the credibility of the other letters and affidavits in the record.

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.* For all the reasons discussed above, the AAO finds that the Earnings Statements as well as 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 date of filing the applicant for legalization.

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.