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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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: HOUSTON Date: OCT 26 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.

IN BEHALF OF APPLICANT:

[redacted]

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 Rhew
Chief, Administrative Appeals Office

DISCUSSION: The applicant's temporary resident status was terminated by the Director, Houston, Texas. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director determined that the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that he attempted to file a Form I-687, Application for Status as a Temporary Resident, with the Immigration and Naturalization Service or the Service (now United States Citizenship and Immigration Services or USCIS) in the original legalization application period between May 5, 1987 to May 4, 1988. Therefore, the director concluded that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and section 245A of the Immigration and Nationality Act (Act) and terminated the applicant's temporary residence.

On appeal, the applicant reiterates his claim of residence in this country for the period in question and asserted that he submitted sufficient evidence to demonstrate such claim. The applicant claims that none of his single absences was more than thirty days and that the aggregate of all his absences did not exceed one hundred eighty days.

The status of an alien lawfully admitted for temporary residence may be terminated at any time if it determined that the alien was ineligible for temporary residence under section 245A of the Act. 8 C.F.R. § 245a.2(u)(1)(i).

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)(1).

For purposes of establishing residence and presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the alien attempted to file a completed Form I-687 application and fee or was caused not to timely file, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. *See* Paragraph 11, page 6 of the CSS Settlement Agreement and paragraph 11, page 10 of the Newman Settlement Agreement.

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 period, 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 including affidavits is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and, identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

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 petitioner 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 applicant submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to USCIS on February 15, 2005. At part #4 of the Form I-687 application where applicants were asked to list all names used or known by, the applicant's former counsel listed "None." Further, at part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant's former counsel listed the applicant's residences as [redacted] from March 1981 to April 1983, [redacted] from April 1983 to July 1985, [redacted] from July 1985 to May 1986, and [redacted] from May 1986 to March 1995. In addition, at part #32 of the Form I-687 application where applicants were asked to list all absences from the United States since first entry, the applicant's former counsel indicated that the applicant had been absent from this country when he travelled to Mexico on three occasions; in November 1985 for an unspecified

number of days to visit his family, from February 1987 to March 1987 for an unspecified number of days to see his ill mother, and from March 15, 1988 to April 5, 1988 for twenty-one days to see his family. The fact that the applicant listed only a [redacted] Texas as his residence in this country from March 1981 to April 1983 without providing a specific street address tends to diminish the credibility of the his claim of residence in the United States for this portion of the requisite period.

The record shows that the applicant had previously asserted a claim to class membership in one of the legalization class-action lawsuits, and as such was permitted to file a separate Form I-687 application on February 3, 1992. At part #4 of this Form I-687 application where applicants were asked to list other names used or known by, the applicant testified that he used the names [redacted] and [redacted]. While the remaining information regarding the applicant's residences, employment history, and absences from this country on this Form I-687 application matches information listed on the Form I-687 subsequently filed on February 15, 2005, it must be noted that the two Form I-687 applications in the record contain conflicting testimony at part #4 relating to the applicant's use of an assumed name.

The record reflects that the applicant was granted temporary resident status on January 6, 2006.

The director determined that the supporting documents and testimony in the record contained in the record could not be considered as credible because of discrepancies and conflicts relating to critical elements of the applicant claim of residence in the United States for the requisite period. As a result, the director found that the applicant failed to establish that he continuously resided in this country in an unlawful status since before January 1, 1982. Therefore, the director concluded that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and section 245A of the Act and terminated the applicant's temporary resident status on November 19, 2009.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center [or other office] does not identify all of the grounds for denial in the initial decision. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center [or other office] does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd.* 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

Although the director failed to note this issue in terminating the applicant's temporary residence, the first issue to be examined in these proceedings is whether the applicant has submitted sufficient evidence to establish that he, [redacted], and [redacted] are all one and the same individual. In cases where an applicant claims to have met any of the eligibility criteria under an assumed name, the applicant has the burden of proving that he or she was in fact the person who used that name. 8 C.F.R. § 245.2(d)(2)(i).

The most persuasive evidence of common identity is a document issued in the assumed name which identifies the applicant by photograph, fingerprint or detailed physical description. Other evidence which will be considered are affidavit(s) by a person or persons other than the applicant, made under oath, which identify the affiant by name and address and state the affiant's relationship to the applicant and the basis of the affiant's knowledge of the applicant's use of the assumed name. Affidavits accompanied by a photograph which has been identified by the affiant as the individual known to the affiant under the assumed name in question will carry greater weight. Other documents showing the assumed name may serve to establish the common identity when substantiated by corroborating detail. 8 C.F.R. § 245.2(d)(2)(ii).

In support of his claim to have used the names [redacted] and [redacted], the applicant submitted an identification card bearing a photograph in the name [redacted]' However, an examination of this document reveals that it is undated and it cannot be determined whether the individual depicted in the photograph is in fact the applicant. In addition, the validity of the identification card and the information therein is questionable as the document was not issued by a governmental agency but was issued by a private company, [redacted], and bears the notation "Carrier Certifies Information True and Correct."

The applicant included an employment affidavit that is signed by [redacted]. [redacted] declared that the applicant was also known as [redacted] and had been employed as a fence helper and laborer by the [redacted]., in Houston Texas from August 5, 1987 to March 31, 1991. [redacted] provided the applicant's address of residence and noted that the applicant was paid $4.00 per hour and worked forty hours per week for fifty weeks per year with relevant business records reflecting his employment being unavailable. Nevertheless, the probative value of this affidavit cannot be considered as persuasive under 8 C.F.R. § 245.2(d)(2)(ii), as the affidavit does not contain a photograph, fingerprint or detailed physical description identifying the applicant as [redacted]. Further, the affidavit fails to provide sufficient corroborative detail as required under 8 C.F.R. § 245.2(d)(2)(ii), to substantiate that the applicant used the name [redacted]

The applicant has failed to submit sufficient evidence to meet his burden of proof in establishing he, [redacted], and [redacted] are in fact one and the same individual as required by 8 C.F.R. § 245.2(d)(2)(i). More importantly, the documentation submitted by the applicant regarding his use of the name [redacted] is limited to that portion of the requisite period from August 5, 1987 through May 4, 1988, and provided no evidence of the applicant's continuous residence in the United States from prior to January 1, 1982 to August 4, 1987. Consequently, the applicant has not established that he met any of the eligibility criteria using these assumed names under the terms of the CSS/Newman Settlement Agreements and section 245A of the Act.

The next issue to be examined in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his burden of establishing continuous unlawful residence in the United States during the requisite period.

As noted above, the two Form I-687 applications in the record contain testimony indicating that the applicant had been absent from this country when he travelled to Mexico on three occasions; in November 1985 for an unspecified number of days to visit his family, from February 1987 to March 1987 for an unspecified number of days see his ill mother, and from March 15, 1988 to April 5, 1988 for twenty-one days to see his family. A review of the record revealed that the applicant previously filed a Form I-485 LIFE Act application with the Service on April 2, 2002. The applicant included a Form G-325A, Biographic Information Form, with his filing of the Form I-485 LIFE Act application. On the Form G-325A biographic report, the applicant specifically acknowledged that he was married in [redacted] Mexico on January 16, 1982. It must be further noted that the record contains a Civil Marriage Certificate listing the date of the applicant's civil marriage in Mexico as January 16, 1982 and a separate Religious Marriage Certificate reflecting that he and his wife were also subsequently married in a religious ceremony at [redacted], Mexico on February 19, 1982. The fact that the applicant did not list a corresponding absence from this country as a result of his marriage in Mexico in early 1982 on either of the Form I-687 applications in the record seriously impaired the credibility of his claim of residence in the United States from prior to January 1, 1982, as well as the credibility of any documentation submitted in support of that claim.

In support of his claim of continuous residence in this country since prior to January 1, 1982, the applicant submitted affidavits signed by [redacted], and [redacted] Regardless, these affidavits have no probative value as none of the affiants included a specific date in attesting to their acquaintance with the applicant or his residence in this country.

The applicant included an original envelope that is postmarked July 24, 1985. However, the authenticity of this postmarked envelope can neither be confirmed nor denied as the envelope contains a postal meter mark rather than postage stamps.

The applicant provided submitted four color photocopies of photographs which purport to reflect his residence in the United States during the period in question. Nevertheless, these photographs have no probative value as the specific locations depicted in these photographs cannot be discerned and the date such photographs were taken cannot be determined.

The applicant submitted two affidavits signed by [redacted], as well as single affidavits signed by [redacted], respectively. While all of the affiants attested to the applicant's residence for the requisite period or a portion thereof, their testimony is general and vague and

does not provide any specific and verifiable information to substantiate the applicant's claim of continuous residence in this country for the period in question.

The applicant included affidavits that are signed by [redacted] and [redacted], respectively. In his affidavit, [redacted] stated that the applicant worked for him on various occasions "...from the early to mid eighties to the mid-nineties." In his affidavit, [redacted] declared that he had known the applicant since November 1981 through the date the affidavit was executed on June 28, 1997 and that they had worked together at [redacted] Associated [redacted]. However, it must be noted that the applicant failed to list [redacted] as an employer on either of the Form I-687 applications contained in the record.

The applicant provided a declaration and a separate affidavit both of which are signed by [redacted]. [redacted] indicated that he was a manager at [redacted] which was owned by [redacted] and located in [redacted] noted that the applicant worked at this enterprise as a ranch hand from February 1981 to 1985. Nevertheless, [redacted] failed to both specify the applicant's address of residence during his employment and provide relevant information relating to the availability of business records reflecting the applicant's employment as required by 8 C.F.R. § 245a.2(d)(3)(i).

The applicant's remarks on appeal regarding the sufficiency of evidence he submitted to demonstrate his residence in this country during the period in question have been considered. However, the supporting documents contained in the record do not contain specific and verifiable testimony to substantiate the applicant's claim of residence in the United States for the period in question. In addition, the record contains testimony and evidence that tend to conflict with critical elements of the applicant's claim of residence including his employment history and the number and duration of his absences rather than corroborate such claim.

The absence of sufficiently detailed supporting documentation and the conflicting nature of evidence and testimony in the record impair the credibility of the applicant's claim of residence in this country for the period in question. Pursuant to 8 C.F.R. § 245a.2(d)(3), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. The applicant has failed to submit sufficient credible documentation to meet his burden of proof in establishing that she has resided in the United States since prior to January 1, 1982 by a preponderance of the evidence as required under both 8 C.F.R. § 245a.2(d)(3) and *Matter of E- M-*, 20 I&N Dec. 77 (Comm. 1989).

Under these circumstances, it cannot be concluded that the applicant has established that the claim of continuous residence for the entire requisite period is credible and probably true. Therefore, the applicant has not established eligibility for temporary residence under the terms of the CSS/Newman Settlement Agreements and section 245A of the Act. As the applicant has not overcome the grounds for termination of status, the appeal must be dismissed.

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