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



**U.S. Citizenship
and Immigration
Services**



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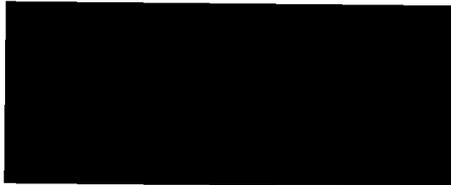
APR 02 2012

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.

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 Field Office Director (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 November 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 September 27, 2004. On July 22, 2006, the district director in Los Angeles, California, denied the application for class membership. The applicant timely filed an appeal to the Special Master. On June 22, 2011, the Special Master granted his appeal and remanded the case to the director in Los Angeles to decide the case on its merit. The record reflects that on August 22, 2011, 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 erred in his decision to deny the application. Counsel contends that there is sufficient credible evidence in the record to establish the applicant's physical presence in the United States since 1981, but that the director incorrectly discredited the evidence submitted by the applicant because he failed to list his 1987 absence from the United States on a prior Form I-687 he submitted in 1993. Counsel submits a brief and updates to the applicant's and his witnesses' statements. Counsel also submitted additional witness statements with the appeal. The AAO has considered the applicant's assertions, reviewed all of the evidence, and has made a *de novo* decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the evidence.¹

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

¹The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

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. Here, the applicant has failed to meet his burden. The documentation that the applicant submits in support of his claim to have arrived in the United States before January 1, 1982 and lived in an unlawful status through the requisite period consists of a photocopy of a California Identification Card issued in the applicant's name on March 7, 1986, letters from the applicant's employers during the 1980s, copies of W-2, Earnings Statements, and copies of individual income tax returns for the applicant, and witness statements attesting to the applicant's presence and residence in the United States during the 1980s. The AAO has reviewed each document in its entirety to determine the applicant's eligibility; however, the AAO will not quote each witness statement in this decision. Some of the evidence submitted indicates that the applicant resided in the United States after May 4, 1988; however, because evidence of residence after May 4, 1988 is not probative of residence during the requisite time period, it shall not be discussed.

The AAO acknowledges that a photocopy of the California Driver's License issued to the applicant on March 7, 1986 is evidence that the applicant was residing in the United States as of March 1, 1986, the date the identity card was issued. Accordingly, the copies of W-2 and Earnings Statements from [REDACTED] will be accepted as evidence of the applicant's continuous residence in the United States from March 1986 through May 4, 1988. The other evidence, consisting of witness statements and a letter of employment from [REDACTED], which the applicant submitted as evidence of his residence in the United States from November 1981 through March 1986, is suspect and not credible.

The June 7, 1993 letter from [REDACTED] who identified herself as the owner of [REDACTED] states that the applicant was employed as a maintenance worker from November 1981 through January 1986. She also states that the applicant was rehired by the company as a tree trimmer in December 1992. The letter from [REDACTED] does not comport with the regulatory requirements at 8 C.F.R. § 245a.2(d)(3)(i) because the letter does not identify the applicant's address at the time of employment, does not provide details of the applicant's duties and responsibilities, does not declare whether the information about the applicant's employment was taken from company records, where the records are kept and whether the United States Citizenship and Immigration Services (USCIS) will be able to review the records. The letter is not accompanied by copies of pay stubs, earnings statements, or tax records to demonstrate that the applicant was actually employed during any of the years indicated. [REDACTED] did not provide any evidence of her identity and residence in the United States during the period nor did she provide any documentation to establish the existence of [REDACTED] at the period in question and that she is indeed the owner of the company.

In her brief in support of the appeal, counsel claims that the applicant worked temporary jobs as a day laborer from 1981 until 1986, that his primary employer at the time was [REDACTED] for which he performed on-call work about once a week, that he was paid in cash, that

the applicant performed temporary work for the company for about five years. Counsel contends that because of the informal nature of the applicant's employment during this period, he does not believe that [REDACTED] kept official records of the applicant's employment during the period 1981 through 1986. In support of these assertions, counsel points to the applicant's own statement dated October 10, 2011, submitted with the appeal, and statements from witnesses who claim to have worked with the applicant at [REDACTED] or have personal knowledge that the applicant worked for the company during the stated period. Contrary to counsel's assertions, the letter from Ms. [REDACTED] does not support counsel's claim about the temporary nature of the applicant's employment with the company, that he was paid cash and that the company did not keep official record of the applicant's employment. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

For all the reasons discussed above, the AAO finds the letter of employment from [REDACTED] is not credible. As such, it has little probative value as evidence of the applicant's continuous residence in the United States from before January 1, 1982 through January 1986.

As for the affidavits and statements in the record from witnesses who claim to have lived with, worked with or otherwise have known that the applicant resided in the United States during the 1980s, they have minimalist or fill-in-the-blank formats with very few details from the witnesses. Considering the length of time they claim to have known the applicant – in most cases since 1981 – they provided very few details about the applicant's life in the United States and the nature and extent of their interactions with him over the years. The witnesses do not state how they date their initial meeting with the applicant or how they acquired knowledge of when or how the applicant entered the United States. The affidavits and statements are not accompanied by documentary evidence – such as photographs, letters, and the like – demonstrating the witnesses' personal relationships with the applicant in the United States during the requisite period. Although some of the witnesses provided documentation to establish their identities, none provided evidence of their residence in the United States during the requisite period. Consequently, the statements and affidavits have little probative value as evidence of the applicant's continuous residence in the United States during the requisite period.

Upon a *de novo* review of all of the evidence in the record, the AAO finds that the applicant has failed to submit credible evidence to establish that he continuously resided in the United States in an unlawful status for the requisite period. Accordingly, he has not established that he is eligible for the benefit sought. The various statements currently in the record which attempt to substantiate the applicant's residence in the United States during the statutory period are not credible and thus are not probative.

Accordingly, 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.