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

[redacted]

L1

DATE: JUN 18 2012 Office: MIAMI [redacted]

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:

[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 application for temporary resident status pursuant to the terms of the settlement agreements reached in a Stipulation of Settlement in the class action *Northwest Immigrant Rights Project, et al vs. USCIS, et al,* 88-CV-00379 JLR (W.D. Was.) (NWIRP) was denied by the Director, Miami, Florida. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant submitted a Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (Act). The director denied the application, finding that the applicant had not provided credible evidence to establish that he had entered the United States as a lawful nonimmigrant prior to January 1, 1982, and that his lawful nonimmigrant status expired or that he violated the terms of his nonimmigrant visa, and that he thereafter continuously resided in the United States in an unlawful status for the duration of the requisite period.

On appeal, counsel states that the applicant entered the United States through California in 1981. Counsel also states that the applicant provided affidavits, proof of his physical presence in the United States and credible testimony regarding his entry into the United States.

Preliminarily, the AAO notes that the director adjudicated the application pursuant to the terms of the Northwest Immigrant Rights Project Settlement agreements (NWIRP). On September 9, 2008 the court approved NWIRP. Class members are defined, in relevant part, as:

> 1. Class Members [include] all persons who entered the United States in a nonimmigrant status prior to January 1, 1982, who are otherwise *prima facie* eligible for legalization under § 245A of the INA [Immigration & Nationality Act], 8 U.S.C. § 1255a, who are within one or more of the Enumerated Categories described below in paragraph 2, and who –
>
> (A) between May 5, 1987 and May 4, 1988, attempted to file a complete application for legalization under § 245A of the INA and fees to an INS officer or agent acting on behalf of the INS, including a Qualified Designated Agency ("QDE"), and whose applications were rejected for filing (hereinafter referred to as 'Subclass A members'); or
>
> (B) between May 5, 1987 and May 4, 1988, attempted to apply for legalization with an INS officer, or agent acting on behalf of the INS, including a QDE, under § 245A of the INA, but were advised that they were ineligible for legalization, or were refused legalization application forms, and for whom such information, or inability to obtain the required application forms, was a substantial cause of their failure to file or complete a timely written application (hereinafter referred to as 'Sub-class B' members); or

(C) filed a legalization application under INA § 245A and fees with an INS officer or agent acting on behalf of the INS, including a QDE, and whose application

i. has not been finally adjudicated or whose temporary resident status has been proposed for termination (hereinafter referred to as 'Sub-class C.i. members'),
ii. was denied or whose temporary resident status was terminated, where the INS or CIS action or inaction was because INS or CIS believed the applicant had failed to meet the 'known to the government' requirement, or the requirement that s/he demonstrate that his/her unlawful residence was continuous (hereinafter referred to as 'Sub-class C.ii members').

2. Enumerated Categories

(1) Persons who violated the terms of their nonimmigrant status prior to January 1, 1982 in a manner known to the government because documentation or the absence thereof (including, but not limited to, the absence of quarterly or annual address reports required on or before December 31, 1981) existed in the records of one or more government agencies which, taken as a whole, warrants a finding that the applicant was in an unlawful status prior to January 1, 1982, in a manner known to the government.
(2) Persons who violated the terms of their nonimmigrant visas before January 1, 1982, for whom INS/DHS records for the relevant period (including required school and employer reports of status violations) are not contained in the alien's A-file, and who are unable to meet the requirements of 8 C.F.R. §§ 245a.1(d) and 245a.2(d) without such records.
(3) Persons whose facially valid 'lawful status' on or after January 1, 1982 was obtained by fraud or mistake, whether such 'lawful status' was the result of

(a) reinstatement to nonimmigrant status;
(b) change of nonimmigrant status pursuant to INA § 248;
(c) adjustment of status pursuant to INA § 245; or
(d) grant of some other immigration benefit deemed to interrupt the continuous unlawful residence or continuous physical presence requirements of INA § 245A.

The first issue to be addressed is whether the applicant established that he is a member of the NWIRP class. The director found that the applicant is not a NWIRP class member. The AAO concurs. The record contains a copy of the applicant's nonimmigrant B-1/B-2 visa issued on

September 19, 1980 in Lima, Peru, valid for multiple entries until September 19, 1987. The applicant's passport shows that he was admitted into the United States at Miami, Florida on October 22, 1986. The applicant has not established that he entered the United States in a nonimmigrant status prior to January 1, 1982. Further, the applicant indicates in his class membership form that he first entered the United States without inspection on October 15, 1981, and he also states in a sworn affidavit dated June 8, 2009 that he first entered the United States in October 1981. Therefore, by the applicant's own admission, the applicant has not established that he entered the United States as a lawful nonimmigrant prior to January 1, 1982 and that he is a member of the NWIRP class.

The next issue to be addressed is whether the applicant established his continuous residence in the United States throughout the requisite period.

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 245(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).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), "until the date of filing" shall mean 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. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *Matter of Ho,* 19 I & N Dec. 582, 591-592 (BIA).

The applicant claims on his initial and current Form I-687 applications that he resided in Miami, Florida, from November 1981 through the requisite period. The applicant also claims in his class membership form and sworn affidavit that he first entered the United States without inspection on October 15, 1981.

The applicant submitted, as proof of his asserted date of entry into the United States and continuous residence in the United States during the requisite period affidavits from [redacted] and [redacted], letters from previous employers and other evidence.

In her affidavit, [redacted], states that she has known the applicant since 1958 and that she has first-hand knowledge that the applicant continuously resided in the United States since October 1981. The affiant does not state how she gained such knowledge.

In an affidavit dated September 5, 1990, Carlos Aparcana states that he has known the applicant since 1980 and knows the applicant resided in the United States since 1980. This information conflicts with the information given by the applicant in his class membership form and sworn affidavit where he claims he first entered the United States without inspection on October 15, 1981. It is incumbent upon the applicant to resolve any inconsistency in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *See Matter of Ho,* 19 I&N Dec. 582, 591-92 (BIA 1988).

In their affidavits, [redacted] and [redacted] state that they know the applicant and know the applicant resided in the United States since 1981. They fail to state how they date their initial acquaintance with the applicant. The affiants give little information about the applicant and the events surrounding their association with him during the requisite period.

In their affidavits, [redacted] and [redacted] state that they have known the applicant since 1980, and 1981, respectively, and know the applicant resided in the United States since 1980. This information conflicts with the information given by the applicant where he claims he first entered the United States without inspection on October 15, 1981. It is incumbent upon the applicant to resolve any inconsistency in the record by independent objective evidence. *See Matter of Ho, supra.*

In his affidavit, [redacted] states that he has known the applicant since 1985 and knows that the applicant resided in the United States since 1985. The affiant gives little information about the applicant and the events surrounding his association with him during the requisite period.

The affidavits submitted by the applicant are judged according to their probative value and credibility and not the quantity of declarations/affidavits submitted by the applicant. To be considered probative and credible, witness statements must do more than simply state that a witness knows an applicant and that the applicant has lived in the United States for a specific period. Their content must include sufficient detail from a claimed relationship to indicate that it probably did exist and that the witness, by virtue of that relationship, does have knowledge of the facts alleged. The AAO finds that the witness statements do not provide sufficient detail. In many of the affidavits which are noted, the affiants did not sufficiently explain the facts stated in their affidavits and in some instances, the affiants did not explain how they gained the information about the stated facts. For the aforementioned reasons, the AAO finds that the witness statements can only be given nominal weight.

While an applicant's failure to provide evidence other than affidavits shall not be the sole basis for finding that she/he failed to meet the continuous residency requirements, an application which is lacking in contemporaneous documents cannot be deemed approvable if considerable periods of claimed continuous residency rely entirely on affidavits which are considerably lacking in certain basic and necessary information. The affiants' statements are significantly lacking in detail and do

not establish that the affiants actually had personal knowledge of the events and circumstances of the applicant's initial entry and residence in the United States. The affidavits do not provide much relevant information beyond acknowledging that they knew the applicant for all or part of the requisite period. Overall, the affidavits provided are so deficient in detail that they can only be given nominal probative value. An applicant applying for adjustment of status under this part has the burden of proving by a preponderance of evidence that he or she is eligible for adjustment of status under section 245a of the Act. 8 C.F.R. § 245a.2(d)(5).

The record contains a letter from Ramon Perez, general manager of Quality Sales Export, Corp. who states that the applicant worked for the company doing general maintenance work from August 1987 thru November 1989. A letter signed by [redacted] of [redacted] states that the applicant worked for him doing landscape, cleaning and general maintenance work from November 1981 to October 1985. 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 letters do not state the applicant's address at the time of employment, and whether the information was taken from company records, records that the witness may have maintained or the witness's own recollection. Therefore, the letters will be given nominal weight.

The applicant provided a copy of his social security statement showing that he worked in 1986 and 1987 earning $1,126, and $2,785, respectively. The applicant provided a copy of his California identification card issued November 5, 1986. The applicant also provided a copy of his State of Florida driver's record showing his driver's license was issued December 4, 1986. This evidence may serve to confirm the applicant was in the United States on those dates, however, it does not establish continuous residence throughout the requisite period.

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). The applicant has been given the opportunity to satisfy his burden of proof with a broad range of evidence pursuant to 8 C.F.R. § 245a.2(d)(3). The absence of sufficiently detailed documentation to corroborate the applicant's claim of entry into the United States prior to January 1, 1982 and continuous residence for the entire requisite period seriously detracts from the credibility of this claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the evidence of record, it is concluded that the applicant failed to establish that he entered the United States prior to January 1, 1982 and continuously resided in an unlawful status in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application 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.

It is noted that according to the Miami Dade Police Department records and the Clerk's Certificate in the file, on December 16, 1991, the applicant was convicted of violating section 316.193 of Florida Statutes, *driving under the influence*. Case No. 22529WD. The court fined him $557.50. The clerk of the courts claims that after a diligent search of Dade County records, the sentencing information is no longer available. One misdemeanor conviction does not render the applicant ineligible for temporary resident status.

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