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

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

DATE: MAY 0 8 2014 OFFICE: HOUSTON FILE: [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:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

Ron Rosenberg
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) on January 23, 2004, and *Felicity Mary Newman, et al. v. United States Citizenship and Immigration Services, et al.*, CIV. NO. 87-4757-WDK (C.D. Cal) on February 17, 2004 (CSS/Newman Settlement Agreements), was initially approved. The applicant's temporary resident status was subsequently terminated by the field office director in Houston, Texas (director). The case is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director terminated the applicant's temporary resident status, finding that the applicant was ineligible for adjustment to temporary resident status because he 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, the applicant asserts that the evidence which he previously submitted establishes by a preponderance of the evidence that he continuously resided in the United States in an unlawful status for the duration of the requisite period. The applicant has submitted a brief on appeal. We have considered the applicant's assertions, reviewed all of the evidence, and have made a *de novo* decision based on the record and our assessment of the credibility, relevance and probative value of the evidence.[1]

Applicants for temporary resident status under section 245A of the Immigration and Nationality Act (the Act) must establish their entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status from before January 1, 1982 through the date the application is filed. Section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2). Applicants must also establish their continuous physical presence 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 filing date of the application. 8 C.F.R. § 245a.2(b)(1).

For purposes of establishing residence and physical presence under the CSS/Newman Settlement Agreements, the term "until the date of filing" in the regulation at 8 C.F.R. § 245a.2(b)(1) 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 from May 5, 1987 to May 4, 1988. CSS Settlement Agreement, paragraph 11 at page 6; Newman Settlement Agreement, paragraph 11 at page 10.

An applicant for temporary resident status has the burden to establish by a preponderance of the evidence that he or she 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. *See* 8 C.F.R. § 245a.2(d)(5).

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.

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[1] The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

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 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.

The regulations provide an illustrative list of documents – which includes affidavits and "any other relevant document" – that an applicant may submit as evidence of continuous residence in the United States during the requisite period under section 245A of the Act. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The applicant's application for temporary resident status was filed on January 9, 2006 and approved on July 17, 2008. On November 8, 2012, the director issued a Notice of Intent to Terminate (NOIT) the applicant's temporary resident status. After reviewing all previously submitted evidence, the director noted that the only documents pertinent to the applicant's claim to have entered the United States before January 1, 1982, and resided continuously in the United States during the requisite time period, were four affidavits, all dated in late 1989. One was from an individual who claimed to have employed the applicant from 1981 to 1989 and the other three were from individuals (two cousins and a friend) who claim to have known the applicant in Houston from 1980 or 1981 up to the present, during which time he resided at The director concluded that the affidavits were substantively weak, lacked overall credibility, and failed to establish the applicant's continuous residence in the United States during the requisite period. The applicant responded to the NOIT with a letter from counsel and additional documentation.

On August 13, 2013, the director issued a Notice of Termination of the applicant's temporary resident status. In reviewing the evidence of record, the director noted several discrepancies in the information provided by the applicant in two Forms I-687, dated December 12, 1989 and January 9, 2006, and in his interviews with the legacy Immigration and Naturalization Service (INS) on January 15, 1992, and U.S. Citizenship and Immigrations Services (USCIS) on October 12, 2006. The director recounted his review of previously submitted documentation and analyzed the newly submitted evidence, two additional affidavits. Citing the discrepancies in the applicant's testimony and Forms I-687, and the lack of credible evidence in general, the director determined that the record failed to establish that the applicant entered the United States before January 1, 1982, and resided in the United States thereafter in continuous unlawful status during the requisite period. Accordingly, the applicant's temporary resident status was terminated.

The director advised the applicant that in his initial Form I-687, he had indicated that he was absent from the United States only once during the requisite period. The director noted that the applicant had indicated two absences from the United States during the requisite period in his instant Form I-687. The applicant failed to address this discrepancy in his rebuttal to the NOIT.

The director also informed the applicant that his testimony as to how long he worked for one of his employers was inconsistent. The applicant indicated on both Form I-687s that he worked for from 1981 to 1989 but at an interview in 2006, he stated that he had worked for for only "a few years."

In a brief, counsel asserts that the inconsistent information provided by the applicant in his 1989 and 2006 Forms I-687 and in his interviews with the INS and USCIS in 1992 and 2006 were "minor inaccuracies" that do not detract from the overall quality of the applicant's evidence, and cites an internal memorandum from INS in 1987 which recommended a balanced and flexible approach in weighing the evidence and testimony of Form I-687 applicants. Counsel references the regulation that allows the submission of affidavits and any other relevant document, 8 C.F.R. § 245a.2(d)(3), and quotes from a more recent internal memorandum from

USCIS stating that the absence of corroborating evidence is not necessarily fatal to an affidavit's credibility. In counsel's view the affidavits submitted by the applicant constitute sufficient evidence under applicable regulations and USCIS policy to establish, by a preponderance of the evidence, that the applicant meets the date of entry and continuous U.S. residency requirements to qualify for temporary resident status under section 245A of the Act. Counsel requests that the applicant's status as a temporary resident be reinstated.

The salient issue on appeal is whether the applicant has established his continuous residence in the United States during the requisite period. We have reviewed the evidence of record, and conclude that the applicant has not met his burden of proof to establish his eligibility for temporary resident status pursuant to the settlement agreements.

The record includes the following evidence:

- An affidavit signed by Houston resident dated November 24, 1989, who stated that he is a cousin of the applicant, met him at home in May 1981, and sees him on a weekly basis. Mr. stated that the applicant resided at in Houston throughout this time.
- An affidavit signed by a resident of in Houston, dated November 29, 1989, who stated that she is a cousin of the applicant, met him at her home in December 1980, sees him on a daily basis, and the applicant resided at with her throughout this period.
- An affidavit signed by Houston resident dated November 30, 1989, who stated that she met the applicant at church in February 1981, has been friends with him since then, and sees him on a weekly basis. Ms. stated that the applicant resided at in Houston throughout this time.
- An affidavit signed by the owner of in Houston, Texas, dated December 1, 1989, who stated that he employed the applicant in his shop uninterruptedly from May 1981 up to the present, during which time the applicant resided at in Houston. Mr. described the applicant's duties as "labor, porter, helper to body man" and stated that the applicant was paid in cash at the rate of $4.75 per hour.

The record also includes additional affidavits from two of the earlier affiants. They include:

- An affidavit from (formerly , dated November 23, 2012, reiterating that she met the applicant, her cousin, in December 1980, when he came to live with her and her father at in Houston.
- A letter signed by notarized on November 24, 2012, reiterating that she met the applicant at church in Houston on February 8, 1981, through her husband, who was friends with the applicant's father. Ms. stated that the applicant lived at and that she and the applicant would meet from time to time on holidays and special occasions.

The director determined that since the four affidavits from 1989 were fill-in-the-blank-forms, that they should be given little weight. This determination shall be withdrawn. The format of the affidavit is insignificant. Nonetheless, it is noteworthy how little information the affiants provided about the applicant. The affidavits offer few, if any, details about the applicant's life in the United States, such as how he spent his time and the nature and extent of his interaction with the affiants over the years. Except for the body shop owner who

claimed to have employed the applicant, the affiants provided no information about where the applicant worked during the 1980s. In response to the director's NOIT, the applicant submitted additional affidavits from Ms. and Ms. However, the affiants provided scant details about the applicant's life in Houston and their contact with the applicant. Due to the paucity of information they provide about the applicant, the affidavits lack credibility.

We have also reviewed the discrepancies in the applicant's Forms I-687 and his interview testimony before the INS and USCIS. The discrepancies have not been individually addressed in the appeal brief, though counsel has attempted to minimize their importance. While it may be asserted that the discrepancies alone are not of such magnitude as to make the application unapprovable, they magnify the evidentiary shortcomings of the application in general, particularly since the applicant offers no explanations on appeal for the discrepancies.

Given the lack of probative evidence in the record, the AAO determines that the applicant has failed to establish, by a preponderance of the evidence, that he entered the United States before January 1, 1982, resided continuously in the United States in an unlawful status throughout the requisite period. Accordingly, the applicant is ineligible for temporary resident status under section 245A of the Act. The appeal will be dismissed.

The burden of proof in these proceedings rests solely with the petitioner. *See* section 291 of the Act, 8 U.S.C. § 1361 (2012); *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). That burden has not been met in this action.

ORDER: The appeal is dismissed. The Notice of Termination, dated August 13, 2013, is affirmed. This decision constitutes a final notice of ineligibility.