

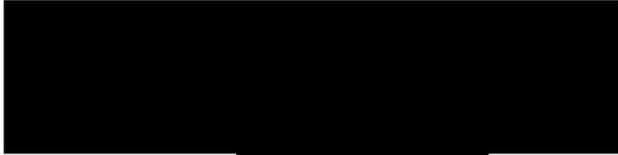
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U.S. Citizenship
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Services

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FILE: [REDACTED]
MSC 04 349 11570

Office: LOS ANGELES

Date: NOV 06 2008

IN RE: Applicant: [REDACTED]

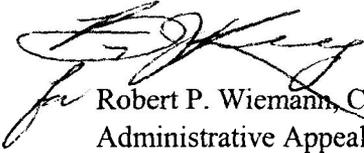
APPLICATION: Application for Temporary Resident Status under Section 245A of the
Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

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.


Robert P. Wiemann, 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 Immigration and Citizenship Services, et al.*, CIV. NO. 87-4757-WDK (C.D. Cal) on February 17, 2004 (CSS/Newman Settlement Agreements), was denied by the director in Los Angeles, California. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application on the ground that the applicant failed to establish his continuous residence in the United States in an unlawful status from before January 1, 1982 through the date of attempted filing under section 245A of the Immigration and Nationality Act (Act) during the original one-year application period that ended on May 4, 1988.

An applicant for temporary resident status must establish his or her 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. See 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. See 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. See 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 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 of May 5, 1987 to May 4, 1988. See 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 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 is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

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.* at 80. 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 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, 431 (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.

Although the regulations provide an illustrative list of contemporaneous documents that an applicant may submit, the list also permits the submission of affidavits and any other relevant document. *See* 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 applicant, a native of Mexico who claims to have resided in the United States since 1981, filed his application for temporary resident status under section 245A of the Act (Form I-687), together with a Form I-687 Supplement, CSS/Newman (LULAC) Class Membership Worksheet, on September 13, 2004. On the Form I-687, which was prepared by counsel, the applicant listed nine residences in the United States since first entry – beginning with [REDACTED] in Los Angeles from December 1983 to October 1986, and followed by [REDACTED]¹ in Los Angeles from October 1986 to October 1988. The applicant also listed his employment in the United States since first entry – beginning with two discontinuous stints at Elite Slides, Inc. in Lynwood, California, from January 1981 to January 1983 and from January 1987 to January 1993.

¹ The correct spelling of the street is [REDACTED]

As evidence of his residential and work history in the United States from 1981, the year he claims to have entered the United States, through May 4, 1988, the original filing deadline for legalization applications under Section 245A of the Act, the applicant submitted the following documentation with his Form I-687:

- A letter from [REDACTED] executive assistant of Elite Slides, Inc., a furniture components business in Lynwood, California, dated June 11, 2003, stating that the applicant was employed by the company from 1981 to 1983 and again from 1987 to 1991.
- An affidavit by [REDACTED], a resident of Riverside, California, dated April 5, 2003, stating that the applicant is his brother, that the applicant moved into his house at [REDACTED] in Los Angeles in December 1983 when he began working at “The Silver Plate Bar” on 7th Street, and that the applicant worked at that establishment until October 1986.
- An air mail envelope with a postmark date of May 1, 1987,² addressed from the applicant at [REDACTED], in Los Angeles, California, to an individual in Mexico.
- Two photocopied air mail envelopes with postmark dates of December 12, 1986 and March 30, 1988, addressed from the applicant at [REDACTED], in Los Angeles to an individual in Mexico.

On August 11, 2006 the applicant, accompanied by an interpreter/translator, [REDACTED] was interviewed at the Los Angeles District Office.

On September 23, 2006, the director issued a Notice of Decision denying the application. The director cited various inconsistencies between the applicant’s interview testimony and documentation in the record with regard to the applicant’s initial date of entry into the United States, when his continuous residence in the United States began, and the number and duration of his absences from the United States. The director found that the applicant had failed to establish that he resided continuously in the United States for the requisite period to be eligible for adjustment of status under section 245A of the Act.

On appeal counsel asserts that the director disregarded or misconstrued the applicant’s interview testimony and documentary evidence relating to his residence in the United States. In counsel’s view, the record amply demonstrates that the applicant meets the continuous residence requirement for legalization under section 245A.

² While it appears that there may have been an attempt to alter the year to read “1981,” it is clear from a visual inspection of the postmark that the year is 1987.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided continuously in the United States in an unlawful status from before January 1, 1982 through the date he attempted to file a Form I-687 during the original one-year application period that ended on May 4, 1988. The AAO determines that he has not.

At his legalization interview on August 11, 2006 the applicant stated that he entered the United States for the first time on September 26, 1981. This statement conflicts with the information the applicant provided on his Form I-687 in September 2004. On that form the applicant indicated that his employment in the United States began at Elite Slides, Inc. in January 1981 – eight months before he claims to have entered the country. Furthermore, on the Form I-687 the applicant did not list any residence in the United States before December 1983, the month he claims to have begun living at the [REDACTED] address in Los Angeles with his brother. Thus, the Form I-687 is both internally inconsistent and inconsistent with the applicant's interview testimony with respect to (1) the applicant's initial date of entry into the United States, (2) when his continuous residence in the United States began, and (3) when his employment in the United States began.

It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies will not suffice without competent evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92, (BIA 1988). Moreover, doubt cast on any aspect of the applicant's evidence also reflects on the reliability of the applicant's remaining evidence. *See id.*

The only contemporaneous documentation in the record of the applicant's residence in the United States during the requisite period for legalization under section 245A of the Act are the three letter envelopes (one original, two in photocopy) with postmark dates in December 1986, May 1987, and March 1988. Even if the AAO accepts this documentation as persuasive evidence of the applicant's residence in the United States from late 1986 until at least the spring of 1988 (the applicant claims to have resided at the return address on [REDACTED] in Los Angeles from October 1986 to October 1988), the applicant must still demonstrate that he was continuously resident in the United States during the years before 1986, and that his continuous residence began before January 1, 1982. The only evidence in this regard is the employment letter by [REDACTED] and the affidavit by the applicant's brother.

The letter from [REDACTED], on the letterhead of Elite Slides, Inc., does not comport with the requirements of 8 C.F.R. § 245a.2(d)(3)(i) because it does not identify the applicant's address at the time of employment; does not identify the exact period of employment (indicating only that the applicant worked from sometime in 1981 to sometime in 1983, and resumed working for the company sometime in 1987); does not state the applicant's duties; does not declare whether this information was taken from company records; and does not indicate the location of such records and whether they are available for review. The letter provides no information whatsoever about the applicant during the years 1984-1986. Due to these substantive deficiencies, the letter from [REDACTED] has little probative value. It is not persuasive evidence that the applicant resided continuously in the United States from before January 1, 1982 through 1986.

As for the affidavit by the applicant's brother, [REDACTED], it states where the applicant lived and worked from December 1983 to October 1986, but offers no further details about his life in the United States during that time. The affidavit was not accompanied by any documentary evidence of the affiant's identity and his own presence in the United States during the 1980s, nor any documentation – such as photographs, letters, and the like – demonstrating the affiant's personal relationship with the applicant in the United States during the years 1983-1986. Moreover, the affiant provides no information at all about the applicant before December 1983, and does not claim that the applicant was even in the United States at that time. This omission is consistent with the applicant's Form I-687, which does not list any residence in the United States before December 1983. For the reasons discussed above, the affidavit by [REDACTED] has little evidentiary weight for the time period it addresses and no probative value whatsoever as evidence of the applicant's residence in the United States before December 1983.

Based on the foregoing analysis of the evidence, the AAO concludes that the applicant has failed to establish that he entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from that date through the date he attempted to file a Form I-687 during the original one-year application period that ended on May 4, 1988. Accordingly, the applicant is ineligible for temporary resident status under section 245A(a)(2) the Act.

The appeal will be dismissed, and the application denied.

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