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



U.S. Citizenship  
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FILE:

[Redacted]  
MSC 05 235 15267

Office: LOS ANGELES

Date: JUN 17 2009

IN RE: Applicant:



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.

John F. Grissom  
Acting 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 that he was continuously resident in the United States in an unlawful status from before January 1, 1982 through the date of attempted filing during the original one-year application period for legalization that ended on May 4, 1988.

On appeal counsel asserts that the applicant resided continuously in the United States from September 1981 to May 1988, and that the evidence of record establishes this fact.

An applicant for temporary resident status under section 245A of the Immigration and Nationality Act (the Act) 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 from before January 1, 1982 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 his or her continuous physical presence 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 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. See CSS Settlement Agreement, paragraph 11 at page 6; Newman Settlement Agreement, paragraph 11 at page 10.

“Continuous unlawful residence” is defined at 8 C.F.R. § 245a.2(h)(1)(i), as follows: “[A]n applicant for *temporary resident status* shall be regarded as having resided continuously in the United States if, at the time of filing the application, no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982 through the date the application for temporary resident status is filed, unless the alien can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed.”

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. *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.

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 the applicant may submit as evidence of continuous residence in the United States during the requisite period under section 245A of the Act. *See* 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The applicant, a native of Mexico who claims to have lived in the United States since September 15, 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 May 23, 2005.

On June 23, 2006, the applicant was interviewed at the Los Angeles District Office, which on February 28, 2007 issued a request for additional evidence of the applicant’s residence in the United States during the years 1982-1988. The applicant responded on May 29, 2007 by submitting some additional documentation.

On April 16, 2007, the director issued a Notice of Denial. The director cited certain evidence in the record as indicating that the applicant was in Mexico during 1983 and 1984, which was inconsistent with the applicant’s claim on his Form I-687 and at his interview to have been absent from the United States only once since his initial entry into the United States – a trip to Mexico in August 1987 of under 30 days. The director concluded that the applicant had failed to establish that he resided continuously in the United States during the requisite period – before January 1, 1982 through May 4, 1988 – to qualify for temporary resident status under the Act.

On appeal counsel acknowledges that the applicant was absent from the United States on another occasion – in September and October 1983 to get married in Mexico – but asserts that this absence was also brief – under 30 days – and therefore did not interrupt the applicant’s continuous residence in the United States. Counsel reiterates the applicant’s claim to have resided continuously in the United States since September 1981.

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).

Notwithstanding some conflicting information regarding the applicant’s residential address(es) during the 1980s, the record contains the following evidence that the applicant resided in the United States during the late 1980s: (1) four original envelopes postmarked between October 23, 1987 and February 23, 1988, which identify the applicant’s addresses in San Fernando (1987) and Newhall (1988), California; (2) two Form W-2, Wage and Tax Statements (one original and one photocopy), issued by Magic Ford L–M in Valencia, California, to the applicant at addresses in San Fernandez (sic) and Newhall, California, respectively, for the years 1987 and 1988; and (3) a photocopied California driver license with an issue date of February 1, 1988, identifying the applicant’s address as Newhall, California. Based on the foregoing evidence, the AAO concludes that the applicant has established by a preponderance of the evidence that he resided in the United States during the years 1987 and 1988.

In contrast to those two years, however, the applicant has not submitted any primary or secondary documentation for earlier years. The only evidence of the applicant’s residence in the United States before 1987 is a collection of affidavits and declarations submitted by friends and relatives in 1990 (in connection with an earlier Form I-687 filed by the applicant that year) and in 2005, in connection with the applicant’s current Form I-687. They include:

- Two fill-in-the-blank affidavits by [REDACTED] and [REDACTED], residents of Los Angeles County, dated April 7, 1990 and April 6, 1990, stating that the applicant resided with them at [REDACTED] in Lake Elizabeth, California, from October 7, 1981 to February 10, 1985, and at [REDACTED] in Newhall, California, from February 1, 1985 to August 1, 1989, respectively.
- Three fill-in-the-blank affidavits from [REDACTED] and [REDACTED], all of whom appeared to be residents of Los Angeles County, dated April 12-14, 1990, stating that they had known the applicant since late 1981. [REDACTED] claimed that the applicant lived with him and his brother in Elizabeth Lake, California, starting in October 1981, and both he and [REDACTED]

claimed that they had worked with the applicant many times. claimed to have been in constant contact with the applicant since 1981.

Three undated declarations submitted with the applicant's current Form I-687 in 2005, from: (1) , the applicant's brother, a resident of San Fernando, California, who stated that the applicant came to the United States in 1981, resided with her on in San Fernando until 1990, and worked in a self-employed capacity at a number of jobs; (2) a resident of Sylmar, California, who stated that he met the applicant at a party at his sister's house in 1981 and has stayed in contact with him over the years in activities such as church and soccer games on Sundays; and (3) , of unstated address, who stated that he lived in Inglewood, California during the years 1981 to 1988 and during that time the applicant worked with him occasionally at the same body shop in Los Angeles.

The foregoing documentation includes contradictory information regarding the applicant's place(s) of residence during the 1980s. The affidavits of and in 1990, claiming that the applicant resided with them during the years 1981-1985 and 1985-1989, respectively, conflict with the declaration of the applicant's sister, in 2005, who claimed that the applicant resided with her from 1981 to 1990. The applicant's own affidavit, dated May 22, 2007, as well as his current Form I-687, accord with the declaration of . The applicant's earlier Form I-687 in 1990, however, accords with the affidavits of and

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). Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of the applicant's remaining evidence. *See id.*

Aside from the evidentiary discrepancy about the applicant's residential address(es) in the 1980s, which is unresolved in the record, the affidavits and declarations submitted in 1990 and 2005 are thin on detail. For the length of time they claim to have known him, it is remarkable how little information the authors provide about the applicant's life in the United States, the circumstances of their meeting him, and the nature and frequency of their interaction with him over the years. Nor are the affidavits and declarations accompanied by any documentary evidence – such as photographs, letters, and the like – of the applicant's personal relationship with any of the authors during the 1980s.

In view of their substantive shortcomings and internal contradictions, the AAO finds that the affidavits and declarations have little probative value. They are not persuasive evidence of the applicant's continuous unlawful residence in the United States during the years before 1987.

Based on the foregoing analysis of the evidence, the AAO concludes that the applicant has not established that his continuous unlawful residence in the United States began before 1987.

Since the applicant has not established 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 for legalization that ended on May 4, 1988, he is ineligible for temporary resident status under section 245A(a)(2) of the Act.

The appeal will be dismissed, and the application denied.

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