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



U.S. Citizenship  
and Immigration  
Services

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MAY 27 2009

FILE: [REDACTED] Office: LOS ANGELES Date:  
MSC 06 098 23710

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:

SELF-REPRESENTED

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) 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 Director, Los Angeles. 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), and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet. The director denied the application, finding that the applicant had not provided credible evidence to establish that he had continuously resided in the United States in an unlawful status for the duration of the requisite period.

On appeal, the applicant states that he provided affidavits from witnesses including two new affidavits with the appeal and an employment letter from Barton's Cleaner as proof of his residency in the United States for 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).

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. 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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her 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).

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 petitioner 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, 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.

At issue in this proceeding is whether the applicant submitted sufficient credible evidence to meet his burden of establishing that he (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. 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 during the requisite period consists of affidavits of relationship written by friends, letters from previous employers and other evidence. The AAO will consider all of the evidence relevant to the requisite period to determine the applicant’s eligibility.

The applicant indicates in his testimony and in the interviewer’s notes during the Form I-687 application interview that he first entered the United States without inspection in August 1981. On his Form I-687 application, the applicant claims that he entered the United States without a visa on September 15, 1981 at San Ysidro, California.

The applicant submitted several affidavits to establish his initial entry and residence in the United States during the requisite period. [REDACTED] and [REDACTED] state in their affidavits that they first met the applicant in 1981 at a party and playing basketball, respectively. Both affiants state that the applicant has been living in the United States since 1981 and since their meeting in 1981, they have become good friends and see each other all the time. When they were questioned by a United States Citizenship and Immigration Services (USCIS) adjudicating officer telephonically, the affiants did not recall the applicant. When the officer asked specifically about the affidavits they signed, they both remembered the applicant. However, the verbal testimonies differed from the affidavits they had signed. Telephonically, [REDACTED] stated that she met the applicant in the 1970’s at their children’s music school and [REDACTED] stated that he met the applicant in Mexico. On appeal, the applicant explains that the affiants do not know him by his maternal last name, Leon, and that they were confused and both are senior citizens.

█ states in her affidavit that the applicant has been in the United States since 1981. The affiant also attests to the applicant's good moral character. The affidavit provides no other information about the applicant.

In his affidavit, █ testifies that the applicant has been continuously physically present in the United States since 1981 and that from 1981 to 1989, he worked at Barton's 1 Hour Cleaners in Mar Vista, California. The letter provides no other information about the applicant.

In a letter signed by the owner of Barton's 1 Hour Cleaners, the owner states that the applicant worked for him as a presser from 1981 to 1989. In another letter, █, entertainment organizer of My Rosa Enterprises, states that the applicant performed as a strolling musician on the weekends during the summer of 1981 to the winter of 1985. Neither employment letter is dated. Further, the letters do not comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(i) that 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. As the letters do not meet the requirements stipulated in the aforementioned regulation, they will be given nominal weight.

The interviewer's notes reveal that when the applicant was questioned about the affiants, █ and █, he stated that they met in 1981 but he did not know their addresses and telephone numbers. On appeal, the applicant explains that he could not remember the addresses and telephone numbers of some of the persons that signed the affidavits because he does not have a good memory.

The affidavit signed by █ states that he used to live with the applicant at █, Los Angeles, California, from September 1981 to September 1988 and shared the rent. The affiant provides no evidence of residing at the above address with the applicant for the period of time stated and provides no other information about the applicant.

█ states in her affidavit that the applicant has been living in the United States since 1981 and lists his residences in Los Angeles, California, from 1981. The affiant provides no other information about the applicant.

█ and █ state in their affidavits that the applicant came to the United States in 1981 and stayed with them at █ Los Angeles, California, for three days while looking for a friend. The affiants state that since 1981, they see each other at family meetings and parties of mutual friends. The affidavits provide no other information about the applicant.

Upon review, the affidavits do not include sufficient detailed information about the claimed relationship of more than 27 years and the applicant's continuous residency in the United States since before January 1, 1982 and throughout the requisite period. The affiants fail to specify social gatherings and other special occasions or social events where they saw and communicated with the

applicant during the requisite period. For instance, none of the witnesses supplies any details about the applicant's life, such as, knowledge about his family members, employment, shared activities, hobbies, and the date and manner he entered the United States. The affiants fail to indicate any other details that would lend credence to their claimed acquaintance with the applicant and the applicant's residence in the United States during the requisite period.

The affidavits do not provide concrete information, specific to the applicant and generated by the asserted associations with him, which would reflect and corroborate the extent of those associations and demonstrate that they were a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the affidavits. To be considered probative and credible, witness affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged.

The affidavits do not contain sufficient detail to establish the reliability of their assertions. The affidavits are insufficient to establish the applicant's 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 requisite period. Therefore, the affidavits have little probative value.

Considering all the evidence of record, the AAO finds that the applicant has not established that he probably resided in the United States throughout the requisite period. Given the lack of detail in the affidavits and the employment letters, the applicant has failed to submit sufficient evidence to overcome the director's denial. The evidence, calls into question the credibility of the applicant's claim of continuous unlawful residence in the United States throughout the requisite period. The evidence submitted is insufficient to establish the applicant's 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 requisite period.

Therefore, 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.

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