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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] Office: CHICAGO  
[REDACTED] - consolidated herein]  
MSC-06 097 10976  
MSC-08 088 25693 - APPEAL

Date: NOV 20 2009

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 J. Rhew  
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 in Chicago, Illinois. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a native of Mexico who claims to have lived in the United States since January 1981, 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 on January 5, 2006. The director denied the application, finding that the applicant 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 counsel asserts that the director did not properly evaluate the documentation submitted by the applicant in support of his application. In counsel's view, the documentation in the record is sufficient to establish that the applicant meets the continuous residence requirement for the duration of the requisite period. Counsel submits additional documentation with the appeal.

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 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. 8 C.F.R. § 245a.2(b).

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) 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 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.

The issue in this proceeding is whether the applicant (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 record reflects that although the applicant claims that he entered the United States before January 1, 1982 and resided continuously in the country since then, other documents in the record indicate otherwise. On a prior Form I-687 the applicant completed in 1993 as well as the accompanying affidavit for determination of class membership he completed under penalty of perjury on January 9, 1993, the applicant indicated that he entered the United States in December 1981 and resided continuously since then except for three trips outside the United States to Mexico, each lasting for about one month. The first trip was from November 15 to December 30, 1984; the second trip was from August 15 to August 30, 1987; and the third trip was from

August 1 to August 25, 1989. The applicant did not indicate any other trips outside the United States during the 1980s or at any other time. The applicant indicated the following as his addresses in the United States since entry:

- [REDACTED] from December 1981 to January 1985;
- [REDACTED] from January 1985 to November 1986;
- [REDACTED] from November 1986 to October 1988; and
- [REDACTED] since October 1988.

On the current Form I-687 the applicant filed on January 5, 2006, the applicant indicated that he made only one trip outside the United States to Mexico during the 1980s – within the month of July 1986 – for his mother’s death. The applicant did not indicate any other trips outside the United States during the 1980s or at any other time. The applicant indicated the following as his addresses in the United States since entry:

- [REDACTED] from July 1981 to October 1996; and
- [REDACTED] since October 1996.

The record reflects a copy of a Form G-325A (Biographic Information) completed by the applicant on May 6, 1996, which the applicant filed with a Form I-485 (Application to Register Permanent Residence or Adjust Status) on May 6, 1996. On the Form G-325A, the applicant indicated his last address outside the United States of more than one year as [REDACTED], from August 1947 (month and year of birth) to March 1989. The applicant also indicated that he was employed by [REDACTED] in [REDACTED] as an office worker from January 1974 to March 1989. Also, on a Form I-130 (Petition for Alien Relative) filed on the applicant’s behalf on May 6, 1996, the petitioner indicated that the applicant arrived in the United States in March 1989.

The contradictions in the statements and documents listed above regarding the applicant’s initial entry into the United States and his continuous residence thereafter, call into serious question the veracity of the applicant’s claim that he entered the United States before January 1, 1982 and resided continuously in the country through the requisite period. Furthermore, the contradictions call into question the credibility and the reliability of the affidavits and letters from witnesses attesting to the applicant’s continuous residence in the United States during the requisite period.

It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice without competent objective evidence pointing to where the truth lies. *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 other evidence in the record. *See id.*

There is no contemporary documentation from the 1980s that shows the applicant to have resided continuously in the United States during the requisite period. For someone claiming to have

lived in the United States since January or November 1981, it is noteworthy that the applicant is unable to produce a solitary piece of primary evidence during the following seven years through May 4, 1988.

The record includes a "To Whom It May Concern Letter" from [REDACTED] the pastor at Apostolic Assembly of the Faith in Christ Jesus church in Aurora, Illinois, dated July 14, 2006, stating that the applicant has been a member of the church since August 1985. The letter does not comport to the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(v), which specifies that attestations by religious and related organizations (A) identify the applicant by name, (B) be signed by an official (whose title is shown), (C) show inclusive dates of membership, (D) state the address where the applicant resided during the membership period, (E) include the organization seal impressed on the letter or the letterhead of the organization, (F) establish how the author knows the applicant, and (G) establish the origin of the information about the applicant. The letter did not show the applicant's precise dates of membership, did not indicate where the applicant lived during the membership period or at any time during the 1980s, did not specify how and when [REDACTED] met the applicant, and whether his information about the applicant was based on his personal knowledge, the Church's records, or hearsay. Since the letter did not comply with sub-parts (C), (D), (F), and (G) of 8 C.F.R. § 245a.2(d)(3)(v), the AAO concludes that the letter has little probative value. It is not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988.

Regarding the affidavits in the record from individuals who claim to have known the applicant resided in the United States during the 1980s, they have minimalist formats with very little input by the authors. Although the authors claim to have known the applicant during the early 1980s, they provided very few details about the applicant's life in the United States such as, where the applicant lived during the 1980s, where he worked and the nature and extent of their interactions with him over the years. The letters and affidavits are not accompanied by any documentation – such as photographs, letters or the like – demonstrating the affiants' personal relationships with the applicant in the United States during the 1980s. The affiants did not provide documents to establish their own identities and their residence in the United States during the 1980s. For all the reasons stated above, the affidavits have little probative value. They are not persuasive evidence that the applicant entered the United States before January 1, 1982 and resided continuously in the country through the requisite period.

Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that he is eligible for the benefit sought.

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 on this basis.

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