

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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
and Immigration
Services

PUBLIC COPY



LI

FILE: [Redacted] Office: CHICAGO Date: SEP 02 2009
MSC-06-096-16872

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.

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, or *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 of the Chicago office and 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 (LULAC) Class Membership Worksheet. The director denied the application, finding that the applicant was ineligible for adjustment to temporary resident status because 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 time period.

On appeal, counsel for the applicant asserts that the evidence which the applicant 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 time period. The applicant has not submitted additional evidence on appeal. The AAO has considered counsel's assertions, reviewed all of the evidence, and has made a *de novo* decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the evidence.¹

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)(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) 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.

¹ 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 long been recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n.9 (2d Cir. 1989).

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. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *Matter of Ho*, 19 I & N Dec. 582, 591-592 (BIA).

The issue in this proceeding is whether the applicant has established 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 1982 and lived in an unlawful status during the requisite period consists of several witness statements, pay stubs from several employers, and several W-2 forms. The AAO has reviewed each document in its entirety to determine the applicant's eligibility; however, the AAO will not quote each witness statement in this decision. Some of the evidence submitted indicates that the applicant resided in the United States after May 4, 1988; however, because evidence of residence after May 4, 1988 is not probative of residence during the requisite time period, it shall not be discussed.

The applicant has submitted almost identical fill-in-the-blank affidavits from [REDACTED] and [REDACTED]. [REDACTED] states that he has known the applicant from May 1985 for the duration of the requisite statutory period. [REDACTED] states that he has known the applicant from 1982 for the duration of the requisite statutory period. [REDACTED] states that she has known the applicant from June 1981 for the duration of the requisite statutory period. [REDACTED] states that he has known the applicant from April 1986 for the duration of the requisite statutory period.

The record contains the affidavit of [REDACTED] the applicant's sister. The affiant states that she knows that the applicant has been in the United States since June 1981 because he lived with her from the date of his entry until March 1986 at [REDACTED] in Skokie, Illinois. The applicant has submitted the affidavit of [REDACTED], the applicant's brother, who states that he also lived with the applicant and his sister on [REDACTED] from June 1981 until October 1984. However, the testimony of the affiants is inconsistent with the testimony of the applicant in the instant I-687 application. At the time of completing the I-687 application, the applicant listed his first residence in the United States, from some time in 1981 to some time in 1982, as being at [REDACTED] in Hoffman Estates, Illinois.² In addition, at the time the applicant filed his initial Form I-687 application in 1988 to establish his CSS class membership, the applicant did not list a residence address on [REDACTED] in Skokie, Illinois during the requisite statutory period. Due to these inconsistencies, the affidavits of [REDACTED] and [REDACTED] have minimal probative value.

Although the witnesses claim to have personal knowledge of the applicant's residence in the United States during the requisite period, the witness statements 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 in the United States during the requisite period. 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 it probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. For instance, the witnesses do not state how

² In the instant I-687 application, the applicant lists a residence address at [REDACTED] in Skokie, Illinois from some time in 1982 to March 1986.

they date their initial meeting with the applicant or specify social gatherings, other special occasions or social events when they saw and communicated with the applicant during the requisite period. The affiants also do not state how frequently they had contact with the applicant during the requisite period. The affiants do not provide sufficient details that would lend credence to their claimed knowledge of the applicant's residence in the United States during the requisite period. For these reasons the AAO finds that the witness statements do not indicate that their assertions are probably true.

The remaining evidence in the record is comprised of pay stubs from several employers, several W-2 forms, the applicant's statements, the instant I-687 application, and the applicant's initial Form I-687 application filed in 1988 to establish the applicant's CSS class membership.

The record contains copies of pay stubs from Denny's Inc., Baker's Square Restaurants, Don's, Inc., and Anna Belle's Fish Mart for the period from August 2, 1984 to June 21, 1987. Although these documents provide some detail regarding the applicant's residence in the United States from August 2, 1984 to June 21, 1987, they do not establish the applicant's continuous residence throughout the requisite statutory period.³

The applicant has submitted copies of W-2 forms for the years 1985 through 1988. Although these documents provide some detail regarding the applicant's residence in the United States for the years 1984 through 1988, they do not establish the applicant's continuous residence throughout the requisite statutory period. In addition, the W-2 form for 1985 lists that applicant's residence as [REDACTED] in Chicago, Illinois. In addition, the W-2 forms for the years 1986 through 1988 list the applicant's address as [REDACTED] in Des Plaines, Illinois. The information contained in the W-2 forms is inconsistent with the testimony of affiants [REDACTED] and [REDACTED] regarding the residence address of the applicant from the date of his stated entry in 1981 until March 1986. Due to these inconsistencies, the W-2 forms have minimal probative value.

The AAO finds in its *de novo* review that the record of proceedings contains many materially inconsistent statements from the applicant regarding his residences in and absences from the United States during the requisite statutory period.

The record reveals that at the time of completing the initial I-687 application on May 3, 1988, the applicant listed an initial entry date of November 19, 1981 and residences in Illinois from November 25, 1981 to May 31, 1985 at [REDACTED], then a residence from June 1, 1985 to February 28, 1987 at [REDACTED] then a residence from March 1, 1987 for the remainder of the requisite statutory period at [REDACTED]. The applicant did not list any absences from the United States.

³ In addition, the applicant has submitted a statement of earnings from the Social Security Administration which lists earnings for the applicant beginning in the year 1990. While outside of the requisite time period, the inconsistency calls into question the applicant's continuous residence in the United States during the requisite period.

At the time of filing the instant Form I-687 the applicant listed residences in Illinois from some time in 1981 to some time in 1982 at [REDACTED] then from some time in 1982 to March 1986 at [REDACTED], then from March 1986 for the duration of the requisite statutory period at a different unknown address. Affidavits from the applicant's siblings state that the applicant first entered the United States in June 1981. Regarding absences from the United States, the applicant states that between 1986 and 1988 he had one absence from the United States for a period not in excess of two weeks.

As stated previously, 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 the evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6). Here, the inconsistencies regarding the dates the applicant entered the United States and resided at a particular location within the United States are material to the applicant's claim in that they have a direct bearing on the applicant's residence in the United States during the requisite period. No evidence of record resolves these inconsistencies. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence pointing to where the truth lies. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *Matter of Ho*, 19 I & N Dec. 582, 591-592 (BIA). The applicant has failed to provide probative and credible evidence of his continuous residence in the United States for the duration of the requisite period.

Finally, the AAO notes that on October 16, 1991, the applicant was charged with one count of violating section 21-1 of 720 Illinois Criminal Code (ILCS) 5, *Damage to Property* (Chicago Police Department, [REDACTED]). On October 15, 1993, the applicant was charged with one count of violating section 16-1 of 720 Illinois Criminal Code (ILCS) 5, *Theft* (Chicago Police Department, no stated case number). On February 22, 2003, the applicant was charged with one count of violating section 24-3.1 of the Illinois Penal Code (PC), *Unlawful Possession Firearm/Handgun* (Streamwood Police Department, [REDACTED]). Because the application will be denied on other grounds, the AAO will not request court dispositions for these arrests.

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.