

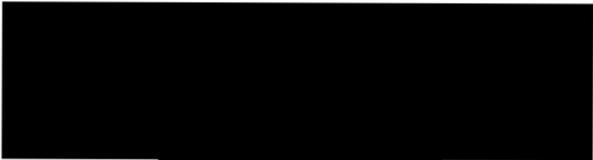
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship
and Immigration
Services



LI

FILE: [REDACTED] Office: NEWARK
MSC 05 231 14862

Date: **SEP 04 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: 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, 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, Newark, New Jersey, and is now before the Administrative Appeals Office (AAO) on appeal. This appeal will be dismissed.

The applicant, a native of Peru who claims to have lived in the United States since August 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 May 19, 2005. 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, the applicant asserts that the director did not properly evaluate the documents submitted in support of his application. In the applicant's view, the evidence in the record is sufficient to establish that he meets the continuous residence requirement in the United States for the duration of 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 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).

“Continuous residence” is defined at 8 C.F.R. § 245a.1(c)(1)(i) as follows: “An alien shall be regarded as having resided continuously in the United States if 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.”

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 AAO determines that the applicant has not met his burden.

The record reflects that on a Form I-687 the applicant filed in July 1992, the applicant indicated that he entered the United States in August 1981, and resided continuously in the country through the requisite period except for two brief trips to Peru from July 10 to August 20, 1983 and from September 20 to November 7, 1987. On the Form I-687 he filed in May 2005, the applicant indicated that he made two trips to Peru— the first trip was in November 1981

returning the same month and the second trip was in September 1987 returning also the same month. The applicant did not submit any objective evidence of his initial entry into the United States in August 1981 or of any of the trips he made outside the United States in the 1980s. It is noted that the contradictory information provided by the applicant of his trips outside the United States during the 198s, casts doubt on the veracity of his claim that he entered the United States before January 1, 1982 and resided continuously in the country through the requisite period.

The record reflects that the applicant was issued a B1/B2 visa at the United States Embassy in Lima, Peru on June 23, 1983, which the applicant used to enter the United States on August 10, 1983. This entry is confirmed by a copy of a Form I-94 (arrival/departure record) in the file. The information on the passport and the Form I-94 indicating that the applicant was admitted into the United States as a B-2 visitor on August 10, 1983, is corroborated by the applicant's statement on a Form I-130 (petition for alien relative) filed on the applicant's behalf on January 16, 1998. On that form, the applicant indicated that he entered the United States as a visitor on August 10, 1983. By his own admission, the applicant was in legal status from August 10, 1983 until February 9, 1984.

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. *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 other evidence in the record. *See id.*

In the absence of any credible evidence to show that the applicant entered the United States before January 1, 1982, and the conflicting information provide by the applicant of his entry into the United States and his continuous residence in the country, it appears that the documented entry on August 10, 1983, was the first time the applicant entered the United States. Therefore, the AAO will accept documentation submitted by the applicant from August 10, 1983 onwards as credible evidence of his residence in the United States through the date of filing the application, and will focus it's review on documentation submitted by the applicant from before January 1, 1982 through August 10, 1983 to determine whether it is sufficient to establish the applicant's continuous residence in the United States for the requisite period.

As discussed above, the applicant has submitted conflicting statements and documents in support of his application. The applicant has not provided any objective evidence to justify or reconcile the contradictions. Therefore, the remaining documentation in the record consisting of – envelopes, merchandise receipts, letters and affidavits from individuals who claim to have employed, rented and apartment to or otherwise known the applicant during the 1980s – is suspect and not credible. Thus it must be concluded that the applicant has failed to establish his continuous residence in the United States during the requisite period.

The applicant has submitted two envelopes addressed to him at [REDACTED] New Jersey as evidence of his residence in the United States during the requisite period. One of the envelopes has two stamps – “Navidad 83.” None of the envelopes bear a United States Postal Service mark to show that the envelopes were received and processed in the United States before

delivery to the applicant. Thus, the envelopes have little probative value and are not persuasive evidence of the applicant's continuous residence in the United States during the requisite period.

The record includes an affidavit of employment from I. Schatzman Inc. in Passaic, New Jersey, dated January 4, 1990, stating that the applicant was employed from October 1981 to July 1983 and was paid \$120.00 per week. The letter of employment does not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because it did not provide the applicant's address during the periods of employment, did not indicate whether the information was taken from company records, and did not indicate whether such records are available for review. The letter is not supplemented by any earnings statements, pay stubs, or tax records demonstrating that the applicant was actually employed during any of the years claimed. Thus, the employment letter has limited probative value. It is not persuasive evidence that the applicant resided continuously in the United States from before January 1, 1982 through the requisite period.

The record also includes two handwritten receipts from R.C. Plumbing & Hardware in Passaic, New Jersey, for merchandise allegedly purchased by the applicant on October 14, 1981 and November 15, 1982. The receipts have handwritten notations of the applicant's name and address with no stamps or other official markings to authenticate the dates they were written. Given these substantive deficiencies, and the general lack of credibility the applicant has shown in other documentary submissions, the AAO concludes the receipts have little probative value and are not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through the requisite period.

As for the letters and affidavits in the record from individuals who claim to have rented an apartment to or otherwise known the applicant during the 1980s, they have minimalist formats with little input by the authors. Considering the length of time they claim to have known the applicant – in all cases since 1981 – the authors provided very few details about the applicant's life in the United States and the nature and the extent of their interactions with the applicant during the 1980s. Nor are the letters and affidavits supplemented by any documentary evidence – such as photographs, letters, and the like – demonstrating the authors' personal relationships with the applicant in the United States during the 1980s. Mr. [REDACTED] claims that he rented an apartment at [REDACTED] Garfield, New Jersey, to the applicant from September 1981 to March 1986. Mr. [REDACTED] however, did not submit any evidence of his identity and residence in the United States during the requisite period, and no evidence that he owned the property which he claims to have rented to the applicant. For the reasons discussed above, the AAO finds that the letters and affidavits have limited probative value. They are not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through the date he filed the application.

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.

Although the applicant has provided sufficient credible evidence of his residence in the United States from August 1983 onwards, he has failed to provide sufficient credible evidence to

establish by preponderance of the evidence his continuous residence from before January 1, 1982 through August 1983. 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.