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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
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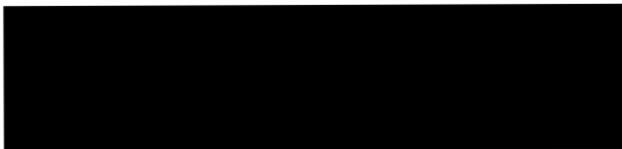
**SEP 08 2009**

IN RE: Applicant:



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:



**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.

A handwritten signature in black ink, appearing to read "John F. Grissom".

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 in Dallas, Texas. 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 February 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 February 8, 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 counsel asserts that the director did not properly evaluate the documentation submitted by the applicant in support of her application. In counsel's view, the evidence in the record is sufficient to establish that the applicant meets the continuous residence requirement for the requisite period. Counsel requested a copy of the Record of Proceedings (ROP) and indicated that he will submit a brief/evidence within 30 days of receiving the ROP. The record indicates that the ROP request was processed on June 18, 2009. The record reflects that counsel has not submitted a brief or additional evidence as indicated. The AAO will consider the record as complete and will adjudicate the application based on the evidence in the record.

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 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 primarily of letters and affidavits – dated in 2004 and 2007 – from individuals who claim to have employed, resided with or otherwise know the applicant in the United States during the requisite period and photocopies of envelopes mailed by the applicant

from the United States in 1984 and 1988 to individuals in Mexico. The AAO has reviewed each document in its entirety to determine the applicant's eligibility.

The record includes a letter from Houston County Sheriff's Department dated June 23, 2004, indicating that the applicant was arrested by Texas Department of Public Safety on March 30, 1986 for driving while intoxicated (DWI), and a court judgment from the court in Houston, Texas. The record reflects that the applicant was convicted in Houston County, Texas on June 3, 1986, and was sentenced to 15 days in jail and a fine of \$350.00. The documents relating to the applicant's arrest and conviction in 1986 is credible evidence that the applicant was in the United States in 1986. The AAO will accept the documents as evidence of the applicant residence in the United States from 1986 onwards and will focus its analysis in this proceeding on evidence submitted by the applicant in support of his residence in the United States from before January 1, 1982 through 1986.

The record includes (1) a letter of employment from [REDACTED] of FRAIZER'S Ornamental & Architectural Concrete, Inc. in Hempstead, Texas, dated September 8, 2007, stating that the applicant was employed during 1984 and 1985, and (2) a letter from [REDACTED] dated September 14, 2007, stating that the applicant was employed from 1981 to 1983.

The letter of employment listed above, do not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because the letters did not provide the applicant's address at the time of employment, did not declared whether the information was taken from company records, did not indicate where the records are kept and did not indicate whether such records are available for review. The authors did not provide a description of the applicant's duties or responsibilities at the businesses and did not indicate periods of layoff. Nor are the letters supplemented by any earnings statements, pay stubs, or tax records demonstrating that the applicant was actually employed during any of the years claimed. For the reasons discussed above, the AAO determines that the employment documents have little probative value. They are not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through the end of 1985.

The affidavits in the record from individuals who claim to have worked with, resided with or otherwise known the applicant in the United States during the 1980s, have minimalist formats with very few details about the applicant's life in the United States and the nature and extent of their interactions with the applicant over the years. The affidavits are not accompanied by any documentary evidence from the affiants – such as photographs, letters, and the like – of the affiants' personal relationships with the applicant in the United States during the 1980s. For the reasons discussed above, the AAO finds that the affidavits have little 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 requisite period.

As for the photocopied envelopes, in the file, they have little probative value as evidence of the applicant's continuous residence in the United States because the United States Postal Service

postmark dates of November 13, 1984 and February 12, 1988, show that the envelopes were mailed from the United States on those dates and do not establish that the applicant resided continuously in the United States from before January 1, 1982 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 analysis of the evidence, 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.