

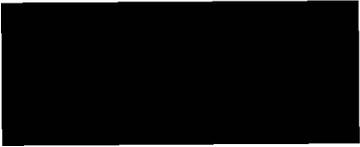
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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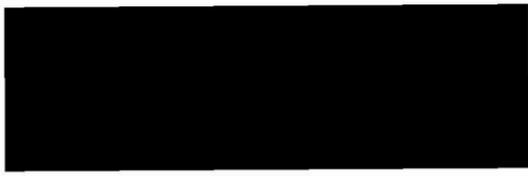
Applicant:



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.

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 1980, 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 10, 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 applicant submitted sufficient credible evidence to establish that he meets the continuous residence requirement for the duration of the requisite period. Counsel submits additional documentation in the form of affidavits attesting to the applicant's continuous residence in the United States during 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).

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 of the following:

Affidavits from individuals who claim to have resided with, worked with or otherwise known the applicant in the United States during the 1980s.

Photocopied envelopes addressed by the applicant to individuals in Mexico, bearing United States Postal Service postmarks showing that the envelopes were mailed from the United States at different dates during the 1980s.

The AAO has reviewed each document in its entirety to determine the applicant's eligibility.

The AAO notes that although the applicant claims that he entered the United States sometime in 1980, the applicant did not submit any credible evidence to establish such entry. The applicant indicated on the Form I-687 that he traveled outside the United States on four separate occasions during the 1980s. The absences were from June to August 1985; from October 1986 to December 1986, from January 1988 to March 1988; and from October 1989 to December 1989. The record however, includes a copy of a Form I-94 (Arrival/Departure record) showing that the applicant was admitted into the United States on June 13, 1988, as a special agricultural worker with authorization to remain in the United States until September 12, 1988. The applicant did not indicate any absence from 1988 that would have accounted for the June 13, 1988 entry. The inconsistency in the record and the absence of any objective credible evidence pointing to when the applicant entered the United States calls into 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.

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.*

The affidavits in the record from individuals who claim to have resided with or otherwise known the applicant during the 1980s, have minimalist formats. The affiants provided very little details about the applicant's life in the United States and the nature and extent of their interactions with him over the years. The affidavits are not accompanied by any documentary evidence from the affiant – such as photographs, letters, and the like – of the affiants' personal relationships with the applicant in the United States during the 1980s. The affiants did not provide documentation of their own identities and residence in the United States during the 1980s. [REDACTED] claims that for four years, the applicant resided at his rented house in 1983, however, Mr. [REDACTED] did not provide the address of the house where the applicant resided. In view of these substantive deficiencies, 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.

The photocopied envelopes allegedly addressed by the applicant to individuals in Mexico bearing United States Postal Service postmark dates showing that the envelopes were mailed on different dates in 1986, have little probative value. The postmarks show that the envelopes may have been mailed from the United States in 1986, but do not establish that the applicant resided in the United States in 1986, much less before January 1, 1982. The originals of the envelopes are not in the file for proper verification. Thus, the envelopes are not persuasive evidence that

the applicant resided in the United States from before January 1, 1982, through the requisite period.

Beyond the decision of the director, the applicant indicated on the Form I-687 he filed on January 10, 2006, that he traveled outside the United States to Mexico from June to August 1985, from October to December 1986, from January to March 1988, and from October to December 1989. On each occasion, the applicant's trip outside the United States exceeded the 45-day maximum prescribed in the regulation at 8 C.F.R. § 245a.1(c)(1)(i). Absences of such duration interrupt an alien's continuous residence in the United States unless (s)he can show that a timely return to the United States could not be accomplished due to emergent reasons. While the term "emergent reasons" is not defined in the regulations, there is some pertinent case law. In *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), the Board of Immigration Appeals held that *emergent* means "coming unexpectedly into being."

The applicant has not established that emergent reasons, within the meaning of 8 C.F.R. § 245a.1(c)(1)(i), prevented his return to the United States from Mexico in 1985, 1986, 1988 or 1989 within the 45-day period allowed in the regulation. Thus, the applicant's trips to Mexico during the 1980s interrupted his continuous residence in the United States during the requisite period. On this ground as well, therefore, the applicant has failed to establish his eligibility for legalization.

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.

For the foregoing reasons discussed above, the AAO finds that 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.