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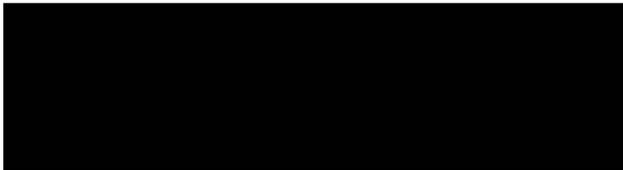
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
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FILE: [REDACTED] Office: LOS ANGELES
MSC-06 067 13195

Date: **JAN 13 2010**

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.

A handwritten signature in black ink, appearing to read "Perry J. Rhew".

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 Los Angeles, California. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a native of Argentina 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 December 6, 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 he has submitted sufficient credible evidence to establish that he meets the continuous residence requirement to adjust status under section 245A of the Act.

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:

- A copy of verification of employment statement by [REDACTED] in Torrance, California, stating that the applicant was employed from February 10, 1982 to November 10, 1986, in sales and that the applicant earned commission.

A photocopy of an envelope with a United States postmark date of June 12, 1982, addressed to the applicant at [REDACTED] by an individual in Lynden, Washington.

- A letter signed by [REDACTED] at Wilmington Community Clinic in Wilmington, California, dated March 12, 1993, stating that the applicant “has been a patient and have been coming to our clinic since 11/12/1981 for medical services. His last visit was on 1/7/1989.”
- A copy of earnings statement from [REDACTED], in Wilmington, California for the period 11-10 to 11-15-1981.
- Photocopy of what appears to be a partial statement of account bearing the applicant’s name and no address with entries from July 3, 1982 to June 13, 1983.

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

The verification of employment statement from [REDACTED] 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 verification of employment 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. Finally, the verification of employment is contrary to the employment information provided by the applicant on the Form I-687 he filed in December 2005. On that form, the applicant indicated his employment during the period 1981 to 1997 as “Sales,” providing his residential address as the address of the employer.

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. For all the reasons discussed above, the verification of employment statement has little probative value. It is not persuasive evidence of the applicant’s continuous residence in the United States from before January 1, 1982 through the requisite period.

As noted above, the applicant has provided contradictory testimony and information in support of his application. The applicant has failed to submit any objective evidence to explain or justify the discrepancies and contradictions in the record. Therefore, the reliability of the remaining evidence consisting of a letter from Wilmington Community Clinic, photocopied envelope, photocopied earnings statement from [REDACTED], and photocopy of a statement of account – is suspect and not credible.

For example, the photocopied earnings statement from [REDACTED] for the period November 10 to November 15, 1981 does not appear to be genuine because the applicant

did not claim [REDACTED], as one of his employers in the United State. Also the partial copy of a statement of account bearing the applicant's name with entries made from July 1982 through June 1983, does not bear an address for the applicant. The name of the applicant appears to have been inserted at a later time. The statement is incomplete and there is no indication as to who issued the statement. The starting date was supposed to be from August 3, 1982, however, entries were made starting in July 1982. This calls into question the credibility of the statement. **The original is not in the record for proper verification.** As previously indicated, doubt cast on any aspect of the applicant's evidence will reflect on the reliability of other evidence in the record. *See Matter of Ho, id.*

The letter from Wilmington Community Clinic stating that the applicant has been a patient and has been coming to their clinic since November 1981, is short on details. It did not give any specific appointment dates, did not indicate how often the applicant came to the clinic to receive medical or the nature of the visits. The letter is not supplemented by any medical records confirming the applicant's visits to the clinic from November 1981 through January 1989. Finally, the letter did not identify any address for the applicant during the 1980s. In view of these substantive shortcomings, the letter has little probative value. It is not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through the requisite period.

The photocopied envelope bearing a United States postmark date of June 12, 1982, addressed to the applicant at [REDACTED], by an individual in Lynden, Washington, shows that the envelope was mailed on the date indicated but does not establish the applicant's continuous residence in the United States during the requisite period. The original envelope is not in the file for proper verification. Thus, the envelope has limited probative values as credible evidence of the applicant's residence in the United States from before January 1, 1982 through the date of filing 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.

Therefore, based on the foregoing, 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.