

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



41

FILE:



Office: LOS ANGELES

Date: **OCT 1 8 2010**

IN RE:

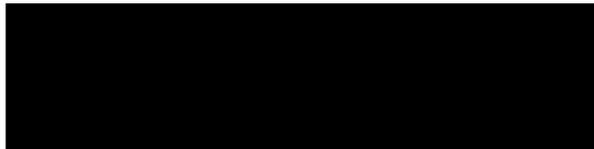
Applicant:



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.

IN 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.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The applicant's temporary resident status was terminated by the Director, Los Angeles, California. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director determined that the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that he attempted to file a Form I-687, Application for Status as a Temporary Resident, with the Immigration and Naturalization Service or the Service (now United States Citizenship and Immigration Services or USCIS) in the original legalization application period between May 5, 1987 to May 4, 1988. Therefore, the director concluded that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and section 245A of the Immigration and Nationality Act (Act) and terminated the applicant's temporary residence.

On appeal, counsel reiterates the applicant's claim of residence in this country for the period in question and asserts that the applicant submitted sufficient evidence to demonstrate such claim.

The status of an alien lawfully admitted for temporary residence may be terminated at any time if it determined that the alien was ineligible for temporary residence under section 245A of the Act. 8 C.F.R. § 245a.2(u)(1)(i).

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 presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the alien attempted to file a completed Form I-687 application and fee or was caused not to timely file, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. See Paragraph 11, page 6 of the CSS Settlement Agreement and paragraph 11, page 10 of the Newman Settlement Agreement.

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 period, 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 including affidavits is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and, identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

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.

Even if the director has some doubt as to the truth, if the petitioner 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 applicant submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to USCIS on February 7, 2005. At part #4 of the Form I-687 application where applicants were asked to list other names used or known by, the preparer (an employee of counsel's law office) indicated that the applicant used the name [REDACTED]. Further, at part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the preparer indicated that the applicant lived at [REDACTED] from June 1985 to 2002, without listing any prior residences in this country. In addition, at part #32 of this Form I-687 application where applicants were asked to list all absences from the United States since January 1, 1982, the

preparer indicated that the applicant had only a single absence when he traveled to Mexico to visit family members from December 1987 to January 1988.

The record shows that the applicant had previously asserted a claim to class membership in one of the legalization class-action lawsuits, and as such was permitted to file a separate Form I-687 application on September 10, 1990. At part #4 of the Form I-687 application where applicants were asked to list other names used or known by, the applicant testified that he used the name [REDACTED]. Furthermore, at part #33 of the Form I-687 application (the difference in the numbering of parts on the two separate Form I-687 applications is explained by the fact that the application format was revised as of April 30, 2004 and again on October 26, 2005) where applicants were asked to list all residences in the United States since first entry, the applicant listed [REDACTED] from December 1981 through the date this Form I-687 application was filed on September 10, 1990. Additionally, at part #35 of this Form I-687 application where applicants were asked to list all absences from the United States since entry, the applicant testified had only a single absence when he traveled to Mexico to visit family members from December 1987 to January 1988.

The record reflects that the applicant was granted temporary resident status on May 18, 2005.

The director determined that the supporting documents and testimony in the record contained in the record could not be considered as credible because of discrepancies and conflicts relating to critical elements of the applicant claim of residence in the United States for the requisite period. As a result, the director found that the applicant failed to establish that he continuously resided in this country in an unlawful status since before January 1, 1982. Therefore, the director concluded that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and section 245A of the Act and terminated the applicant's temporary resident status on September 22, 2009.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center [or other office] does not identify all of the grounds for denial in the initial decision. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center [or other office] does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

Although the director failed to note this issue in terminating the applicant's temporary residence, the first issue to be examined in these proceedings is whether the applicant has submitted sufficient evidence to establish that he and [REDACTED] are one and the same individual. In cases where an applicant claims to have met any of the eligibility criteria under an assumed name, the applicant has the burden of proving that he or she was in fact the person who used that name. 8 C.F.R. § 245.2(d)(2)(i).

The most persuasive evidence of common identity is a document issued in the assumed name which identifies the applicant by photograph, fingerprint or detailed physical description. Other evidence which will be considered are affidavit(s) by a person or persons other than the applicant, made under oath, which identify the affiant by name and address and state the affiant's relationship to the applicant and the basis of the affiant's knowledge of the applicant's use of the assumed name. Affidavits accompanied by a photograph which has been identified by the affiant as the individual known to the affiant under the assumed name in question will carry greater weight. Other documents showing the assumed name may serve to establish the common identity when substantiated by corroborating detail. 8 C.F.R. § 245.2(d)(2)(ii).

In support of his claim to have used the name [REDACTED], the applicant submitted an employment letter dated October 13, 1989 containing the letterhead of [REDACTED], in Walnut, California that is signed by payroll administrator [REDACTED]. [REDACTED] declared that the applicant was also known as [REDACTED] and had been employed by this company from October 1986 to August 1987, and again from April 1988 through the date the letter was executed on October 13, 1989. However, [REDACTED] statements were not made under oath, lacked the applicant's address, and failed to provide sufficient corroborative detail to establish that the applicant and [REDACTED] are one and the same individual as required under 8 C.F.R. § 245.2(d)(2)(ii).

The applicant provided a photocopy of an employee identification card from [REDACTED] Landscape, Inc., bearing the name [REDACTED] and a photograph. Nevertheless, the employee identification card is of no probative value as the photocopied photograph is of such poor quality that the face of individual in the photograph is completely obscured and cannot be identified.

The applicant included photocopies of a Form W-2, Wage and Tax Statement reflecting wages earned by and taxes withheld from [REDACTED] in 1988 at [REDACTED] Landscape, Inc., a Social Security card bearing the name [REDACTED], two membership cards reflecting that [REDACTED] was a member of the United Association of Journeyman and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada in 1987-1988 and 1989-1990, a Statement of Account from the Southern California Pipe Trades Trust Fund issued to [REDACTED] regarding contributions to a pension fund in the last quarter of 1987 and payment of union dues in 1987, and a letter dated March 26, 1999 from the Board of Trustees of the Landscape, Irrigation and Lawn Sprinkler Industry Supplemental Defined Contribution Pension Fund to [REDACTED] regarding his request to withdraw funds. The probative value of these documents cannot be considered as persuasive under 8 C.F.R. § 245.2(d)(2)(ii), as such documents do not contain a photograph, fingerprint or detailed physical description identifying the applicant as [REDACTED], [REDACTED], or [REDACTED]. Further, these documents fail to provide sufficient corroborative detail as required under 8 C.F.R. § 245.2(d)(2)(ii), to substantiate that the applicant used the name [REDACTED] or any other variants of this name listed above.

The applicant has failed to submit sufficient evidence to meet his burden of proof in establishing he and [REDACTED] are in fact one and the same individual as required by 8 C.F.R. § 245.2(d)(2)(i). More importantly, the documentation submitted by the applicant regarding his use of the name [REDACTED] is limited to that portion of the requisite period from October 1986 through May 4, 1988, and provided no evidence of the applicant's continuous residence in the United States from prior to January 1, 1982 to September 1986. Consequently, the applicant has not established that he met any of the eligibility criteria using this assumed name under the terms of the CSS/Newman Settlement Agreements and section 245A of the Act.

The next issue to be examined in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his burden of establishing continuous unlawful residence in the United States during the requisite period.

As noted above, the applicant testified that he resided at [REDACTED] beginning in December 1981 on the Form I-687 application filed on September 10, 1990. However, the preparer of the Form I-687 application filed on February 7, 2005 indicated that the applicant lived at this same address in Rowland Heights, California starting in June 1985, without listing any prior residences for the applicant in this country. The fact that the Form I-687 application filed on September 10, 1990 and the Form I-687 application filed on February 7, 2005 do not contain corresponding information relating to the applicant's place and dates of residence for a substantial portion of the requisite period raises questions relating to the credibility of his claim of continuous residence in the United States since prior to January 1, 1982.

In support of his claim of continuous residence in this country for the required period, the applicant submitted nine rent receipts dated February 15, 1981, March 15, 1981, March 15, 1982, January 15, 1983, May 15, 1984, March 15, 1985, January 15, 1986, February 15, 1987, and April 15, 1988 reflecting his payment of \$300.00 in monthly rent for [REDACTED]. However, all information on the nine rent receipts is hand-written. Additionally, the rent receipts dated February 15, 1981 and March 15, 1981 directly conflict with the applicant's testimony that he began residing at this address in December 1981 on the Form I-687 application filed on September 10, 1990.

As noted above, the applicant included an employment letter signed by [REDACTED] who stated that the applicant had been employed by [REDACTED] c., from October 1986 to August 1987, and again from April 1988 through the date the letter was executed on October 13, 1989. However, this employment letter cannot be considered as probative to the applicant's claim of residence in this country for the period in question under 8 C.F.R. § 245a.2(d)(3)(i) because [REDACTED] failed to provide the applicant's address at the time of employment, did not specify the applicant's duties, and did not provide relevant information relating to the availability of business records reflecting the applicant's employment.

The applicant provided an employment letter containing the letterhead of [REDACTED] in Whittier, California that is signed by the owner, [REDACTED] [REDACTED] declared that he employed the applicant as a helper for \$5.00 per hour from February 1982 to October 1986. However, [REDACTED] failed to provide the applicant's address at the time of employment, did not specify the applicant's duties, and did not provide relevant information relating to the availability of business records reflecting the applicant's employment as required by 8 C.F.R. § 245a.2(d)(3)(i).

The applicant submitted two affidavits both of which are signed by [REDACTED]. [REDACTED] noted that he had become friends with the applicant in Mexico in 1950 and had personal knowledge that he arrived in Los Angeles, California in 1981 and continuously resided in the United States since such date. Although the affiant claimed that he and the applicant were co-workers at [REDACTED], the company owned by his father [REDACTED] in 1984 and 1985, [REDACTED] did not provide any additional verifiable testimony to corroborate the applicant's claim of residence in this country for the required period.

The applicant submitted two affidavits signed by [REDACTED], two affidavits signed by [REDACTED], and single affidavits signed by [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED] respectively. Although these affiants attested to the applicant's residence in the United States for the requisite period or a portion thereof, their testimony is general and vague and does not provide any specific and verifiable information to substantiate his claim of continuous residence in this country for the period in question.

In response to request for additional evidence, the applicant included the Mexican birth certificates and corresponding translations of his eight children. A review of the birth certificate for the applicant's daughter, [REDACTED], reveals that she was born on [REDACTED] and that both the applicant and his wife were present when their daughter's birth was subsequently registered by civil authorities in Estacion Joaquin, Guanajuato, Mexico on June 14, 1982. In addition a review of the birth certificate for the applicant's son, [REDACTED], reveals that he was born on [REDACTED] and that both the applicant and his wife were present when their son's birth was subsequently registered by civil authorities in Santander Jimenez, Tamaulipas, Mexico on May 23, 1983. As discussed previously, the applicant attested to only a single absence from this country during the requisite period when he traveled to Mexico to visit family from December 1987 to January 1988 on both of the Form I-687 applications contained in the record. The fact that these birth certificates demonstrate that the applicant was in Mexico registering the birth of his children on June 14, 1982 and May 23, 1983 directly contradicted his testimony that he had only a single absence from the United States during the required period in 1987. The applicant's failure to disclose these absences from this country during the period in question as well as the duration and purpose of such absences further impairs the credibility of his claim of continuous residence in the United States since prior to January 1, 1982.

On appeal, counsel contends that the evidence in the record is sufficient to establish that the applicant resided in this country for the requisite period as the applicant had previously been granted temporary residence. However, counsel's contention is without merit as the discrepancies and conflicts in the evidence and testimony contained in the record relate to critical elements of the applicant's claim of residence in the United States since prior to January 1, 1982 and are both directly material and relevant to the credibility of his claim of residence in the United States for this period. The AAO conducts a *de novo* review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility and making a determination based upon a preponderance of the evidence as required by the regulation at 8 C.F.R. § 245a.2(d)(5) as well as the precedent decision reached in *Matter of E-- M--*, 20 I. & N. Dec. 77 (Comm. 1989). Furthermore, the AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

The absence of sufficiently detailed supporting documentation and the conflicting nature of the evidence and testimony in the record impair the credibility of the applicant's claim of residence in this country for the period in question. Pursuant to 8 C.F.R. § 245a.2(d)(3), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. The applicant has failed to submit sufficient credible documentation to meet her burden of proof in establishing that she has resided in the United States since prior to January 1, 1982 by a preponderance of the evidence as required under both 8 C.F.R. § 245a.2(d)(3) and *Matter of E- M-*, 20 I&N Dec. 77 (Comm. 1989).

Under these circumstances, it cannot be concluded that the applicant has established that the claim of continuous residence from prior to January 1, 1982 is credible and probably true. Therefore, the applicant has not established eligibility for temporary residence under the terms of the CSS/Newman Settlement Agreements and section 245A of the Act. As the applicant has not overcome the grounds for termination of status, the appeal must be dismissed.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.