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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

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[REDACTED]

LI

FILE:

[REDACTED]

Office: ATLANTA

Date: SEP 28 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:

[REDACTED]

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 Rhew".

Perry 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, Atlanta. The AAO previously rejected the applicant's appeal as untimely. The AAO reopened the matter and the decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because he found the evidence submitted with the application was insufficient to establish eligibility for Temporary Resident Status pursuant to the terms of the CSS/Newman settlement agreements. Specifically, the director noted that the applicant failed to submit sufficient documentation establishing his eligibility for temporary resident status. The director also noted several inconsistencies present in the record. Given the paucity of credible evidence in the record which would establish the applicant's eligibility for the benefit sought, the director denied the application on December 9, 2009.

On appeal, the applicant indicates that he has met the requirements for temporary resident status. He submits additional affidavits in support of his application.

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 has established that he (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 letter of employment from [REDACTED] indicating that the applicant worked as a dishwasher and kitchen helper from 1981 until 1986. The affiant notes that the employment records are not available. It is unclear how the affiant can affirm the applicant's dates of employment without records. The letter also fails to meet certain regulatory standards set forth at 8 C.F.R. § 245a.2(d)(3)(i), which provides that letters from employers must include the applicant's address at the time of employment; exact period of employment; whether the information was taken from official company records and where records are located and whether United States Citizenship and Immigration Services (USCIS) may have access to the records; if records are unavailable, an affidavit form-letter stating that

the employment records are unavailable may be accepted which shall be signed, attested to by the employer under penalty of perjury and shall state the employer's willingness to come forward and give testimony if requested. The statement noted does not include much of the required information and can be afforded minimal weight as evidence of the applicant's residence in the United States for the duration of the requisite period.

- An employment letter signed by [REDACTED] of Casanova Concrete, Inc. The affiant indicates that the applicant was employed with the company from 1988 until 1989 and that he has known the applicant since 1987. This statement also fails to meet the regulatory standard noted above.
- A letter from [REDACTED] the applicant's brother, who indicates that he and the applicant lived together in El Monte, California from January 1982 until December 1989. The record also contains a letter from [REDACTED] who indicates that he rented the property at [REDACTED] to the applicant and his brother from January 1982 until December 1989.
- Affidavits from [REDACTED]
The affiants do not indicate where or under what circumstances they met the applicant, the addresses at which the applicant lived during the requisite period, their frequency of contact with him during this period, or any other details of the events and circumstances of the applicant's residence.
- Copies of handwritten paycheck stubs for dates during the years 1982, 1984, 1986 and 1988 from [REDACTED] of Huntington Beach, California. The name of the employer is not clear from the check stub and the applicant does not list a [REDACTED] as an employer on his Form I-687. In fact, he failed to list any employers for years prior to 1989.
- Undated, unverifiable photographs that the applicant asserts were taken in the United States during the relevant period.

As noted by the director, the record contains several inconsistencies. First, the applicant indicated in a May 5, 2003 interview with USCIS that he had been living in the United States for 10 years. Also, on the Form I-687 in Part 32, the applicant indicates that he resided in Mexico from 1966 until 1983. Neither of these inconsistencies have been addressed by the applicant on appeal.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Following *de novo* review, the AAO finds that the applicant has failed to establish his continuous residence in the United States from January 1, 1982 through the end of the relevant period.

Upon a *de novo* review of all of the evidence in the record, the AAO finds that the evidence submitted by the applicant has not established that he is eligible for the benefit sought.

Finally, it is noted that the applicant is inadmissible to the United States. The applicant was removed from the United States on May 5, 2003 for a period of five years as a consequence for having been found inadmissible as an arriving alien in proceedings under Section 235(b)(1) of the Act. The applicant's Form I-687 Application for Temporary Resident Status was filed November 28, 2005, less than five years after his removal. Thus, the applicant is inadmissible and the application is denied on this ground as well. It is noted that the applicant filed a Form I-690 Waiver of Inadmissibility application which has not yet been adjudicated. The issue is moot however, because even if the waiver were granted, the applicant has not established his continuous residence for the duration of the relevant period.

According to evidence in the record, the applicant has the following criminal history: On March 2, 1996 the Cobb County Police Department arrested the applicant and charged him with violating Section 40-6-391(a)(1), of the Georgia Code, *driving while under the influence of alcohol*, a misdemeanor. He was convicted of the charge on April 9, 1996. On June 28, 1997, the Marietta Police Department arrested the applicant and charged him with a violation Section 40-6-391(a)(1), of the Georgia Code, *driving while under the influence of alcohol*, a misdemeanor. He was convicted of the offense on September 4, 1997. ([REDACTED]

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.