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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

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DATE: DEC 01 2011

Office: DALLAS

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Temporary Resident Status under 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.

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, or *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 of the Dallas office and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record indicates that the applicant filed a Form I-687 Application for Temporary Resident Status on December 15, 2005. On July 21, 2008, the director denied the application noting that the applicant failed to respond to a Notice of Intent to Deny (NOID) issued by United States Citizenship and Immigration Services (USCIS). Thus, the director indicated that the application was abandoned.

USCIS subsequently informed the applicant that, pursuant to a recent court order, applications for temporary resident status may not be denied based on abandonment. The applicant was informed that he was entitled to file an appeal with AAO which must be adjudicated on the merits.

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 that the director's basis for denial of the Form I-687 was in error. The appeal will be sustained.

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 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 furnished sufficient credible evidence to demonstrate that he entered the United States prior to January 1, 1982 and resided in the United States for the requisite period. In this case, the submitted evidence is relevant, probative and credible.

In support of his application, the applicant has submitted the following relevant evidence:

- A Social Security Administration (SSA) earnings statement indicating that he earned taxable wages in the United States every year from 1981 through 1987;
- Forms W-2 issued by [REDACTED] for every year from 1981 through 1987;

- Utility bills dated throughout the relevant period;
- School records for the applicant's children issued by the [REDACTED] District for the years 1982-1986;
- Copies of the birth certificates for the applicant's children, indicating that [REDACTED] was born on April 17, 1983 in Dallas, Texas, and [REDACTED] was born April 23, 1981 in Dallas, Texas. The applicant's name is listed on each certificate.
- A copy of a baptismal certificate indicating that [REDACTED] was baptized on October 31, 1981.
- Texas state identification cards issued during the relevant period.
- Witness statements and affidavits, including a letter from the Dallas Country Club indicating that the applicant was employed there from 1981 until 1987.

On February 20, 2008, the director issued a Notice of Intent to Deny (NOID). The director noted that the applicant provided a sworn statement to United States Citizenship and Immigration Services (USCIS) that he was absent from the United States from July 1987 until November 1987. The director noted that this absence exceeded the 45 day limit for a single absence during the relevant period.

On appeal, through counsel, the applicant indicates that on multiple occasions throughout the record he has asserted that his absence was merely two weeks from July 16, 1987 until July 31, 1987.

The AAO has reviewed the record in its entirety and agrees that the entirety of the record supports the applicant's assertion that he was absent from July 16, 1987 until July 31, 1987. The applicant submitted a Form I-687 on August 21, 1990 along with a Form for Determining Class Membership both indicating that the absence was from July 16, 1987 until July 31, 1987. Furthermore, the applicant submitted another Form I-687 on August 21, 1990 along with a Form for Determining Class Membership on February 21, 1994 indicating that the absence was from July 16, 1987 until July 31, 1987.

Finally on the instant application the applicant also indicates an absence of only two weeks. The only place in the record indicating that the absence extended until November was in the interview conducted on September 4, 1990. The AAO notes that there was not an interpreter provided for the interview and, while the officer conducted the interview in Spanish, it is likely that a misunderstanding could have taken place. Further, the applicant signed an English statement whereas he was not then fluent in English. Given the consistency regarding the applicant's testimony on this issue throughout the record, the AAO finds that this inconsistency does not preclude him from eligibility for temporary resident status.

Furthermore, the director also indicated that the applicant testified that he did not reside in the United States from August 1988 until October 1989. As noted by counsel, this is irrelevant to the instant application and this ground of denial is withdrawn.

The contemporaneous documents submitted by the applicant appear to be credible and probative. The director has not established that the information on the many supporting documents in the record was inconsistent with his testimony or with the claims made on his I-687 application. In addition, apart from the issue of the applicant's absence in 1987, the director has not established that any inconsistencies exist *within* the claims made on the supporting documents, or that the documents contain false information. As stated in *Matter of E-M-*, 20 I&N Dec. at 80, when something is to be established by a preponderance of the evidence, the proof submitted by the applicant has to establish only that the asserted claim is probably true. That decision also states that, under the preponderance of evidence standard, an application may be granted even though some doubt remains regarding the evidence. *Id.* at 79. The documents that have been furnished in this case may be accorded substantial evidentiary weight and are sufficient to meet the applicant's burden of proof of residence in the United States for the requisite period.

The applicant has established by a preponderance of the evidence that he entered the United States before January 1, 1982 and maintained continuous, unlawful residence for the duration of the requisite period. Consequently, the applicant has overcome the particular basis of denial cited by the director.

The AAO notes that the applicant has submitted the final court dispositions for two arrests. The record indicates that he was convicted in County Court of Collin County, Texas of *Driving While Intoxicated*, a misdemeanor, on September 29, 2006. (Case no. [REDACTED])

The record also contains the final court disposition from United States District Court, District of Southern Texas, indicating that the applicant was convicted of violating 8 U.S.C. § 1325, *Entry of Alien at Improper Time or Place*. He entered a plea of guilty on February 18, 1992 and was sentenced to five years of probation. (Case no. [REDACTED]) Two misdemeanor convictions do not render an application ineligible for temporary resident status.

The appeal will be sustained. The director shall continue the adjudication of the application for temporary resident status.

ORDER:       The appeal is sustained.