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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

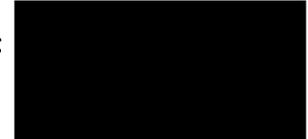
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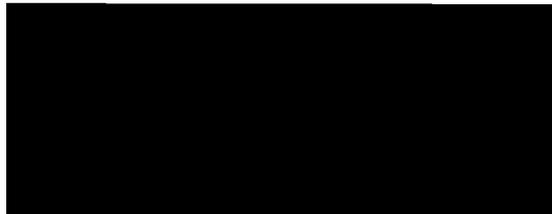
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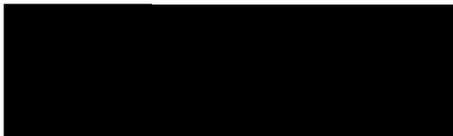


IN RE: Applicant:



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

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.

Elizabeth McCormack

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

The record indicates that the applicant filed a Form I-687 Application for Temporary Resident Status on December 13, 2005. On September 17, 2007, the director denied the application noting that the applicant failed to provide the evidence requested by the director in his request for evidence (RFE). Thus, the director stated that the applicant failed to establish that he resided continuously in the United States during the requisite period.

On appeal, the applicant states that he has submitted the documents requested “every time.” The applicant also states that his case has been “transferred and/or handled by different people.”

On February 27, 2010, the AAO issued a request for additional evidence (RFE) informing the applicant of the deficiencies in the record and providing him with an opportunity to respond. On April 5, 2010, the AAO received the applicant’s response to the AAO’s RFE. In response to the AAO’s NOID, the applicant submits a statement and a criminal record search. The applicant also requests an extension to obtain additional documents. As of this date the AAO has not received additional evidence from the applicant or counsel. Therefore, the record is complete.

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 noted that the applicant failed to submit sufficient evidence in support of his application, and requested further evidence.

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 245(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)(1) 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 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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her 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).

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).

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.* at 80. 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, 431 (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.

In an attempt to establish continuous unlawful residence since before January 1, 1982 through the end of the relevant period, the applicant provided written statements from [REDACTED]

Many of the written statements in the record of proceeding are inconsistent with the applicant's Form I-687. In his letter, [REDACTED] states that he met the applicant in 1985 at work. [REDACTED] states that he and the applicant were colleagues and that the applicant worked as [REDACTED] helper. In his Form I-687, the applicant did not list any employment before 1988. The record also contains a Form I-687 signed by the applicant in 1993. In the 1993 Form I-687, the applicant stated that he was a student from June 12, 1981 to 1988. In addition, the letters from [REDACTED] and [REDACTED] all state that the applicant visited his mother in Mexico for a couple of months

before November 1986. In the Form I-687, the applicant lists one absence to Mexico from October 14, 1987 to November 6, 1987.

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 unless the applicant submits competent objective evidence pointing to where the truth lies. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. See *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The letters fail to meet certain regulatory standards set forth at 8 C.F.R. § 245a.2(d)(3)(i), which provide 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 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 letters submitted do not include much of the required information and can only be accorded minimal weight as evidence of your residence in the United States for the duration of the requisite period.

The affidavits all contain statements that the affiants have known the applicant for years and that attest to the applicant being physically present in the United States during the required period. These statements fail, however, to establish the applicant's continuous unlawful residence in the United States for the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality; an applicant must provide evidence of eligibility apart from his or her own testimony; and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility.

None of the witness statements provide concrete information, specific to the applicant and generated by the asserted associations with the applicant, which would reflect and corroborate the extent of those associations and demonstrate that they were a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the affidavits. To be considered probative and credible, witness affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged.

The record contains a letter on [REDACTED] dated June 9, 2006 and signed by [REDACTED], attendance technician. In her letter [REDACTED] states that the applicant was enrolled at [REDACTED] from September 7, 1981 through June 29, 1984. The record also contains an envelope from the [REDACTED] stamped confidential and taped closed. [REDACTED] also included original photocopies of the applicant's school record indicating that he was first enrolled in 1981 and that he was enrolled at [REDACTED] from September 7, 1981 to June 28, 1984. The record also contains photocopies of school records

for the applicant dated November 26, 1981; 1982-1983; March 10, 1983; October 10, 1984; and March 15, 1985. This is some evidence that the applicant was in the United States from 1981 to 1985.

The record also contains a copy of an immunization record for the applicant listing immunizations on August 25, 1981; October 20, 1981; August 14, 1984; August 12, 1985; August 12, 1986; August 14, 1986; and August 25, 1988. This is some evidence that the applicant was in the United States on those dates.

On February 27, 2010, the AAO issued a request for additional evidence (RFE) informing the applicant of the deficiencies in the record and providing him with an opportunity to respond. In the RFE, the AAO requested the following:

- Certified court records showing a final disposition for an arrest by the Santa Ana Police Department on May 27, 1996 and charged with *MFG/ETC Deceptive GOVT* and *Driving without a License* (Case no. CA0301900);
- The name, address and telephone number for the clinic in San Antonio where the immunizations took place;
- Original school records for the years 1984, 1985, 1986, 1987, and 1988;
- Evidence of residence in the United States during each year that the applicant did not attend school.
- An explanation regarding the inconsistencies between the written statements from [REDACTED] and the applicant's Form I-687; and
- An affidavit from the applicant's caregiver from 1984 to 1988.

On April 5, 2010, the AAO received the applicant's response to the AAO's RFE. In response to the AAO's NOID, the applicant submitted one of the items requested. The applicant did not submit any other documents. In his statement in response to the RFE the applicant stated that he traveled outside of the United States from October 1987 to November 1987 because his mother was ill. The applicant states that his attorney filled out the information for his witnesses and the applicant was not aware that the information listed was incorrect.

The applicant submitted a record search information and certification letter signed by [REDACTED] deputy clerk of the Superior Court of California, County of Orange and dated August 6, 2007. The letter states that the "file/violation" issued on May 27, 1996 (Case no. [REDACTED]) for charges 529.5(a) and 12500a has been destroyed in accordance to Government Code § 68152.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he entered the United States before January 1, 1982, and that he continuously resided in the United States in an unlawful status since such date and through May 4, 1988.

As noted above, the applicant did not submit all of the evidence requested in the AAO's RFE. Failure to respond may be grounds for denying the petition. The regulation at 8 C.F.R. § 103.2(b)(14) states:

Where an applicant or petitioner does not submit all requested additional evidence and requests a decision based on the evidence already submitted, a decision shall be issued based on the record. Failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the application or petition. Failure to appear for required fingerprinting or for a required interview, or to give required testimony, shall result in the denial of the related application or petition.

Beyond the decision of the director, the AAO notes that, as stated above, the letters from [REDACTED] all state that the applicant visited his mother in Mexico for a couple of months before November 1986. The record indicates that this absence was more than 45 days.

Continuous unlawful residence is broken if an absence from the United States is more than 45 days on any one trip unless the return could not be accomplished due to emergent reasons. 8 C.F.R. § 245a.2(h)(1)(i). "Emergent reasons" has been defined as "coming unexpectedly into being." *Matter of C*, 19 I&N Dec. 808 (Comm. 1988).

There is no evidence in the record of proceeding establishing an "emergent reason" as the cause for the applicant's failure to return to the United States in a timely manner, the applicant has failed to establish by a preponderance of the evidence that he has 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.

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.