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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
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U.S. Citizenship  
and Immigration  
Services



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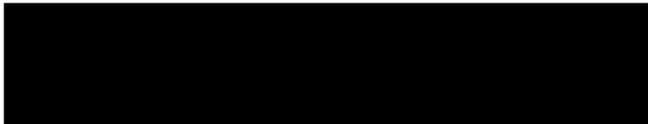


IN RE: Applicant:



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.

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 of the National Benefits Center. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director erroneously denied the I-687 application, finding that the applicant abandoned the application, pursuant to 8 C.F.R. § 103.2(b)(13), by failing to appear for a scheduled fingerprint appointment.<sup>1</sup> Because the director erred in denying the application based on abandonment, on September 22, 2010, the director of the National Benefits Center issued a notice advising the applicant of the right to appeal the AAO. On May 4, 2011, the AAO withdrew the director's decision. The matter is now before the AAO on appeal.

On May 4, 2011, the AAO sent the applicant a follow-up communication informing him that additional documentation was required in order to complete the adjudication of his appeal, and requesting that the applicant provide additional evidence. Specifically, the AAO requested that the applicant provide evidence 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 for the duration of the requisite period. In response to the AAO's request, the applicant has submitted additional witness statements and documents. The AAO has reviewed all of the evidence, and has made a *de novo* decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the evidence.<sup>2</sup>

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

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<sup>1</sup> On December 14, 2009, the United States District Court for the Eastern District of California ruled that United States Citizenship and Immigration Services (USCIS) may not apply its abandonment regulation, 8 C.F.R. § 103.2(b)(13), in adjudicating legalization applications filed by CSS class members. *See, CSS v. Michael Chertoff*, Case 2:86-cv-01343-LKK-JFM.

<sup>2</sup>The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

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. 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. *Matter of Ho*, 19 I & N Dec. 582, 591-592 (BIA).

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 throughout the requisite period. 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 witness statements and documents. The AAO has reviewed each document in its entirety to determine the applicant's eligibility; however, the AAO will not quote each witness statement in this decision. Some of the evidence submitted indicates that the applicant resided in the United States after May 4, 1988; however, because evidence of residence after May 4, 1988 is not probative of residence during the requisite time period, it shall not be discussed.

The record contains witness statements from [REDACTED] (the applicant's father),

[REDACTED] The statements are general in nature, and state that the witnesses have knowledge of the applicant's residence in the United States for all, or a portion of, the requisite period.

Although the witnesses claim to have personal knowledge of the applicant's residence in the United States during the requisite period, the witness statements do not provide concrete information, specific to the applicant and generated by the asserted associations with him, 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 in the United States during the requisite period. To be considered probative and credible, witness statements must do more than simply state that a witness knows an applicant and that the applicant has lived in the United States for a specific period. Their content must include sufficient detail from a claimed relationship to indicate that it probably did exist and that the witness, by virtue of that relationship, does have knowledge of the facts alleged. For instance, except for [REDACTED], the witnesses do not state how they date their initial meeting with the applicant in the United States, or specify social gatherings, other special occasions or social events when they saw and communicated with the applicant during the requisite period. The witnesses also do not state how frequently they had contact with the applicant during the requisite period, or where the applicant resided during that time. The witnesses do not provide sufficient details that would lend credence to their claimed knowledge of the applicant's residence in the United States during the requisite period. For these reasons the AAO finds that the witness statements do not indicate that their assertions are probably true.

In addition, [REDACTED], the applicant's father, was living in Mexico during the requisite period and, therefore, did not have first-hand knowledge of the applicant's continuous residence in the United States during the requisite period. For this reason, this witness statement will be given no weight.

The record contains an undated employment verification letter from [REDACTED] who states that the applicant was employed by him in 1982 and 1983, although he does not provide any details regarding the applicant's job duties or the location of his employment. However, the testimony of the witness is inconsistent with the applicant's testimony in the I-687 application, in which he does not list any employment with [REDACTED] during the requisite period. This inconsistency is material to the applicant's claim, in that it has a direct bearing on his residence in the United States for the duration of the requisite period.

In addition, the employment verification letter of [REDACTED] does not meet the requirements set forth in the regulations, which provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment. The regulation at 8 C.F.R. § 245a.2(d)(3)(i) provides that letters from employers must include: (A) Alien's address at the time of employment; (B) Exact period of employment; (C) Periods of layoff; (D) Duties with the company; (E) Whether or not the information was taken from official company records; and (F) Where records are located and whether the Service may have access to the records. If the records are unavailable, an affidavit-form letter stating that the alien's employment records are unavailable and why such records are unavailable may be accepted in lieu of subsections (E) and (F). The witness's employment verification letter fails to comply with the above cited regulation because it lacks considerable detail regarding the applicant's employment. For instance, the witness does not state the applicant's daily duties, the number of hours or days he was employed, the location at which he was employed, or his address at the time of employment. Furthermore, the witness does not state how he was able to date the applicant's employment. It is unclear whether he referred to his own recollection or any records he may have maintained. Lacking relevant information, the employment verification letter fails to provide sufficient detail to verify the applicant's claim of continuous residence in the United States for the duration of the requisite statutory period. Due to the above, this letter will be given no weight.

The applicant submitted letters from [REDACTED] respectively, both [REDACTED] on [REDACTED]. [REDACTED] states that the applicant attended the church in 1985, 1987 and 1988. [REDACTED] states that as of April 11, 1988, the date of his letter, the applicant was a member of the church. However, the applicant failed to list his membership in [REDACTED] in the I-687 application. At part 31 of the I-687 application, where applicants are asked to list their involvement with any organizations, the applicant did not list membership in [REDACTED].<sup>3</sup> This inconsistency is material to the applicant's claim, in that it has a direct bearing on his residence in the United States for the duration of the requisite period.

More importantly, the witness statements do not meet the requirements set forth at 8 C.F.R. § 245a.2(d)(3)(v), which provides requirements for attestations made on behalf of an applicant by churches, unions, or other organizations. Attestations must: (1) identify applicant by name; (2) be signed by an official (whose title is shown); (3) show inclusive dates of membership; (4) state the

<sup>3</sup> In the I-687 application, the applicant listed his membership during the requisite statutory period in [REDACTED] on [REDACTED], and in Alcoholics Anonymous in Los Angeles. [REDACTED]

address where the applicant resided during membership period; (5) include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; (6) establish how the author knows the applicant; and (7) establish the origin of the information being attested to. These attestations fail to comply with the cited regulation. Therefore, these attestations are of little probative value.

The applicant has submitted copies of two utility bills dated April 17, 1978 and May 9, 1978, respectively. These documents are some evidence in support of the applicant's residence in the United States for some part of 1978.

The record contains copies of an identification document dated September 6, 1984, from the Mexican Consulate General in Los Angeles, and a patient identification card with an expiration date of February 24, 1984, from the University of Southern California Medical Center in Los Angeles. These documents are some evidence in support of the applicant's residence in the United States for some part of 1984.

The applicant has submitted copies of two stamped envelopes postmarked in December 1985, which the applicant mailed from Los Angeles to Mexico. These documents are some evidence in support of the applicant's residence in the United States for some part of 1985.

The record contains a copy of a time sheet for the period from October 31, 1987 to November 12, 1987, and a copy of an identification card dated November 16, 1987 from the California Department of Motor Vehicles. The applicant has submitted a copy of a money order dated November 1987, and a copy of an identification card dated December 17, 1987 from El Mercado. The record also contains a copy of a notice of claim dated February 1, 1988, regarding a claim for wages made by the applicant against an employer named [REDACTED] c., for the period from September 21, 1987 to October 3, 1987; the record also contains a notice of claim dated January 19, 1988, regarding a claim for wages made by the applicant against [REDACTED] for the period from September 14, 1987 to October 3, 1987. However, these two documents are inconsistent with the applicant's testimony in the I-687 application, in which he does not list any employment with [REDACTED], during the requisite period. The remaining documents are some evidence in support of the applicant's residence in the United States for some part of 1987.

The applicant has submitted a copy of a check cashing card dated January 4, 1988 and a copy of an estimate of repairs dated March 17, 1988. These documents are some evidence in support of the applicant's residence in the United States for some part of 1988.

The record contains copies of two additional pieces of postmarked, stamped mail. One is an envelope with an illegible postmark. Since the postmark date is not legible it will be given no weight. The other is a post card that fails to provide any information that would serve to link it to the applicant, such as his name and address. Therefore, the post card will be given no weight.

The applicant has submitted a copy of a receipt dated October 23, 1981, which fails to provide any information that would serve to link it to the applicant, such as his name and address. Therefore, the receipt will be given no weight.

The record contains five photographs of the applicant at unidentified locations, which he has dated 1983 through 1986, two of which the applicant has labeled as having been taken in California. However, the actual locations depicted in the photographs cannot be determined. The record also contains six additional photographs of unknown locations which fail to provide any information that would serve to link them to the applicant. For the above reasons, the 11 photographs will be given no weight.

While some of the above documents indicate that the applicant resided in the United States for some part of the requisite period, considered individually and together with other evidence of record, they do not establish applicant's continuous residence for the duration of the requisite period.

The remaining evidence in the record is comprised of the I-687 application. However, as stated previously, 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 the evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

Here, the applicant has failed to provide probative and credible evidence of his continuous residence in the United States for the duration of the requisite period. The inconsistencies regarding the applicant's membership in a particular church, and his employment at particular locations in the United States are material to his claim in that they have a direct bearing on his residence in the United States during the requisite period. No evidence of record resolves these inconsistencies. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent 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. *Matter of Ho*, 19 I & N Dec. 582, 591-592 (BIA). These contradictions undermine the credibility of the applicant's claim of entry into the United States prior to January 1, 1982 and continuous residence in the United States during the requisite 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. The statements currently in the record which attempt to substantiate the applicant's residence and employment in the United States during the statutory period are not objective, independent evidence such that they might overcome the inconsistencies in the record regarding the applicant's claim that he maintained continuous residence in the United States throughout the statutory period, and thus are not probative.

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 throughout the requisite period. 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.