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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529 - 2090
**U.S. Citizenship
and Immigration
Services**



PUBLIC COPY



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DATE: **MAY 05 2011**

Office: HOUSTON

FILE: 

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

The applicant submitted a Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (Act), and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet. The director denied the application, finding that the applicant had not provided credible evidence to establish that he had entered the United States prior to January 1, 1982, and thereafter continuously resided in the United States in an unlawful status for the duration of the requisite period. The director also determined that the applicant withheld the fact that he was arrested for assault causing bodily injury.

On appeal, counsel states that the applicant provided affidavits as proof that he entered the United States prior to January 1, 1982, and continuously resided in the United States for the requisite period. Counsel also states that the applicant did not withhold the fact that he was arrested because in response to the director's Notice of Intent to Deny (NOID), the applicant provided the disposition of arrest showing that the offense of assault causing bodily injury was dismissed on January 12, 1987. The director was correct in that the applicant failed initially to indicate on the Form I-687 that he was arrested for assault. As the applicant provided the disposition as requested by the director in response to the NOID, the AAO will not address the issue further in this proceeding.

An applicant shall be regarded as having resided continuously in the United States if, at the time of filing the application for temporary resident status, no single absence from the United States has exceeded 45 days, and the aggregate of all absences has not exceeded 180 days between January 1, 1982, through the date the application is filed, unless the alien can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the alien was maintaining residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.1(c)(1)(i).

At issue in this proceeding is whether the applicant provided credible evidence to establish that he entered the United States prior to January 1, 1982, and thereafter continuously resided in the United States in an unlawful status for the duration of the requisite period.

On the first two Form I-687 applications¹, the applicant indicated that he departed the United States from May 10, 1987, returning May 28, 1987 to visit his mother who was ill and from April 20, 1985, returning April 30, 1985 to see his family and to get married.

On the instant Form I-687, the applicant indicated that he left the United States in April 1985 to see his family, in May 1987 to see his family and in July 1988 to get married. The applicant's Form G-325 Biographic Information Sheet indicates that he married in July 1988 in Mexico. At an interview October 2006, the applicant indicated that in April 1985 he returned to Mexico to get married, and in June 1987, he returned to Mexico to visit his mother who was ill. The notes written in the Memorandum Record of Interview state that the applicant left the United States in April 1985 to get married.

The record of proceeding contains the applicant's marriage certificate that reveals the applicant was married to [REDACTED] in Mexico on July 14, 1988. Therefore, the date of the applicant's marriage is resolved; however, the AAO is unable to determine the length of time the applicant remained in Mexico during his marriage. The notes written in the Memorandum Record of Interview also reveal that the applicant has six children; five of the children were born in Mexico. The applicant's Form I-485, Application to Register Permanent Resident or Adjust Status, contained in the record lists the three children born in Mexico during the requisite period as [REDACTED], born on July 9, 1982; [REDACTED], born on June 2, 1984; and [REDACTED] born on June 17, 1985. The birth certificates of two of the applicant's children born in Mexico during the requisite period indicate that both parents were present in Mexico for the registration of their births on April 14, 1983 and January 3, 1985. The applicant does not list either of these absences on any of his Forms I-687 and at his interview. The applicant did not indicate on his Forms I-687 the dates and length of his absences from the United States during his marriage and the registration of each of his children born in Mexico.

The inconsistencies in the applicant's stated reasons for leaving the United States in April 1985 and May 1987; his failure to list his absences from the United States in April 1983 or January 1985 to register the births of his children; and the length of his absence from the United States for his marriage and to register the births of his children in Mexico are material in that they bear on the applicant's continuous 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. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner 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).

¹ The Service record contains three Forms I-687, the current one filed December 29, 2005; another signed by the applicant on November 30, 1995 to register his class membership; and a third filed on March 5, 2001 under a special program.

The applicant provided an affidavit from [REDACTED] that stated he has personal knowledge that the applicant was absent from the United States during the year 1987, from May 10, 1987 to May 28, 1987. The affiant states that he drove the applicant to the bus stop and picked him up on May 28, 1987. This evidence does not resolve the noted inconsistencies.

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).

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 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).

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. 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 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. 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 AAO will consider all of the evidence relevant to the requisite period to determine the applicant's eligibility; however, the AAO will not quote each witness statement in this decision.

The record contains affidavits from [REDACTED] to establish his initial entry and residence in the United States during the requisite period. The affiants generally attest to personally knowing and being acquainted with or knowing the applicant resided in the United States since the 1980s. The affiants attest to the applicant's good moral character but they provide no other information about the applicant.

A letter dated November 8, 1991 signed by [REDACTED] states that the applicant worked for [REDACTED] as a help painter from March 1981 to June 1986 and again from May 1988 to December 1990. In a letter dated November 6, 1990, [REDACTED] for [REDACTED] states that the applicant worked as a cook from June 1986 to May 1988. In a second letter from [REDACTED] the [REDACTED] pra states that the applicant worked at [REDACTED]; but does not say in what capacity. 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. As the letters do not meet most of the requirements stipulated in the aforementioned regulation, they will be given nominal weight.

The applicant provided pay stubs for various weeks in the years 1986, 1987 and 1988. The pay stubs do not bear the employer's name and address. While the pay stubs suggest that the applicant was present in the United States on specific dates, considered individually and together with other evidence of record, they do not establish his continuous residence throughout the requisite period.

The applicant also submitted stamped envelopes which were addressed to the applicant. However, the probative value of the envelopes is limited because the postmark dates are not legible.

The remaining evidence consists of a copy of a note from the office of [REDACTED] stating that the applicant was a patient in the office on November 11, 1981 for bronchitis and has been coming off and on since then for minor illness. The applicant's full name, address and date of birth are not included in the note. The author does not reference the source of the information or include medical records. Absent identifying data, this evidence does not establish that the applicant is a patient of [REDACTED] considered with other evidence of record, the applicant has not established his continuous residence throughout the requisite period.

Upon review, the applicant's assertions are not persuasive. While an applicant's failure to provide evidence other than affidavits shall not be the sole basis for finding that he failed to meet the continuous residency requirements, an application which is lacking in contemporaneous documents cannot be deemed approvable if considerable periods of claimed continuous residency rely entirely on affidavits which are considerably lacking in certain basic and necessary information. The affiants statements are significantly lacking in detail and do not establish that the affiants actually had personal knowledge of the events and circumstances of the applicant's initial entry and residence in the United States. The affidavits do not provide much relevant information beyond acknowledging that they met the applicant in the 1980s and that the applicant resides in the United States. Overall, the affidavits provided are so deficient in detail that they can be given no significant probative value. The applicant has failed to provide probative and credible evidence of his entry and continuous residence in the United States during the requisite statutory period.

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). The applicant has been given the opportunity to satisfy his burden of proof with a broad range of evidence pursuant to 8 C.F.R. § 245a.2(d)(3). The absence of sufficiently detailed documentation to corroborate the applicant's claim of entry into the United States prior to January 1, 1982 and continuous residence for the entire requisite period seriously detracts from the credibility of this claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the applicant's reliance upon affidavits with minimal probative value and the noted inconsistencies, it is concluded that he has failed to establish that he entered the United States prior to January 1, 1982 and continuously resided in an unlawful status in the United States from

prior to January 1, 1982 through the date he attempted to file a Form I-687 application 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.

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