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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**



L1

DATE: OCT 06 2011

Office: PHILADELPHIA

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:

SELF-REPRESENTED

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, Philadelphia, Pennsylvania. A subsequent appeal filed January 17, 2007 was rejected as untimely filed by the director on February 7, 2007. On appeal, filed March 7, 2007, the AAO withdrew the director's decision rejecting the appeal and dismissed the appeal. The director subsequently reopened the proceeding.¹ The matter is again before the Administrative Appeals Office (AAO) 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 found that that the director's basis for denial of your Form I-687 was in error. However, the AAO identified alternative grounds for denial of the application. Specifically, the AAO noted that the applicant failed to submit sufficient evidence in support of his application.

On August 2, 2011, the AAO sent the applicant a Notice informing the applicant of the deficiencies in his application and providing the applicant with an opportunity to submit additional evidence to establish 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. The applicant responded to the AAO's request.

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.

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).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), "until the date of filing" shall mean 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.

¹ 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 [REDACTED].

The applicant shall be regarded as having resided continuously in the United States if, at the time of filing no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred eighty (180) days during the requisite period, unless the applicant can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed. 8 C.F.R. § 245a.2(h)(1)(i).

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 affidavits. 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.

In the applicant's affidavit dated October 8, 2001, the applicant states that he has been in the United States since 1992. However, on the applicant's Form I-687 application, the applicant claims that he has resided in Brooklyn, New York since November 1981 and has been employed as a dishwasher at India [REDACTED], New York, New York since December 1981. No evidence of record resolves this inconsistency. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

[REDACTED] states in his affidavit that he is a citizen of the United States and has resided in the United States since 1987. He does not state when he met the applicant but indicates he is a family friend.

[REDACTED] states in his affidavit that he knows the applicant and knows that the applicant resided in the United States since June 1999. However, evidence of residence after May 4, 1988 is not probative of residence during the requisite time period.

The applicant responded to the AAO's notice of deficiencies in the record on August 29, 2011. The applicant submitted notarized letters from [REDACTED], [REDACTED], and [REDACTED]. [REDACTED] states in her letter dated August 15, 2011 that she met the applicant four years ago and attests to his good moral character. [REDACTED] states in her letter dated August 18, 2011 that she has known the applicant since 2007 and attests to his presence in the United States since and before 2007. These two letters and the affidavit from [REDACTED] attest to events that occurred after the requisite period. Therefore, they can be given no weight.

[REDACTED] states in his letter dated August 13, 2011 that he has known the applicant since 1981 and knows that the applicant has been present in the United States since 1981.

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 have knowledge of the applicant's residence in

the United States. Overall, the affidavits provided are so deficient in detail that they can not be given any significant probative value. Accordingly, the applicant has failed to provide probative and credible evidence of his entry and continuous residence in the United States for the duration of the requisite period.

The applicant also submitted a copy of a Form I-95A, Crewman's Landing Permit. The family name that appears on the Form I-95A is [REDACTED] and the initials are [REDACTED]. The person arrived on the M/V Amoliani and was admitted as a D-1 crewman in Baton Rouge, La. on February 4, 1995. The applicant has not established that the name and information that appears on the Form I-95A relates to the applicant. The applicant also submitted a copy of his Form I-94 showing that he was paroled into the United States on April 7, 2007, a copy of Form 1099-Misc for the year 2008, and a copy of the applicant's driver's license issued October 25, 2004. However, evidence of residence after May 4, 1988 is not probative of residence during the requisite time 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 in the United States during the statutory period are not objective, independent credible evidence regarding the applicant's claim that he maintained continuous residence in the United States throughout the statutory period.

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.