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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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[REDACTED]

DATE: SEP 13 2011 Office: ATLANTA FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

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:
[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, 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, Atlanta. 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 28, 2005. On November 17, 2006, the director denied the application noting that the applicant failed to appear at a scheduled interview with United States Citizenship and Immigration Services (USCIS). The AAO notes that the applicant asserts on appeal that he did appear for the interview. However, the issue is moot because, pursuant to a recent court order, applications for temporary resident status may not be denied based on abandonment.

USCIS subsequently informed the applicant that, pursuant to a recent court order, applications for temporary resident status may not be denied based on abandonment. He 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 found that that the director's basis for denial of the 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 eligibility.

On July 14, 2011, the AAO issued a Notice of Intent to Deny (NOID) informing the applicant of the deficiencies in the record and providing him with an opportunity to respond. The applicant filed a timely response, however, the evidence submitted is insufficient to establish either his entry to the United States prior to January 1, 1982 or his continuous residence in the United States for the duration of the relevant period.

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 be physically present in the United States from November 6, 1986 until the date of filing the application. 8 C.F.R. § 245a.2(b).

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).

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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The initial evidence submitted in support of the application consists of the following:

- Written statements from the following individuals: [REDACTED] While the declarants indicate that the applicant lived in the United States during the relevant period, they fail to indicate how they date their initial acquaintance with him, how frequently they saw him or how they have direct, personal knowledge of his residence in the United States.
- The record also contains written statements from [REDACTED] and [REDACTED] and [REDACTED] indicates that the applicant lived at [REDACTED] in Houston, Texas from 1980 until 1989. This statement contradicts the statement signed on February 24, 2005 in which the applicant indicated that he lived in Houston only until 1984 when he moved to Fort Worth, Texas. He also indicates that three years later he moved to Denver, Colorado and Orlando, Florida. The applicant indicates on

his Form I-687 that he lived in Houston from 1980 until 1986 and in Fort Worth, Texas from 1986 until 1991.

- The record also contains a written statement from [REDACTED] who indicate that the applicant lived in Houston, Texas from November 1984 until March 1988. This is also inconsistent with both the Form I-687 and the statements noted above.
- The only additional evidence contained in the record which pertains to the relevant period consists of a medical bill dated 1986, handwritten receipts and several envelopes post marked in 1986 and 1984. While the envelopes provide some evidence of the applicant's presence in the United States on the dates indicated, they alone are insufficient evidence of continuous residence for the duration of the relevant period.

Noting the above deficiencies, the AAO provided the applicant an additional opportunity to submit evidence of his eligibility.

In response to the NOID, the applicant submits a written statement indicating that he considered his permanent address during the relevant period to be in Houston, Texas as stated by affiant [REDACTED]. However, he indicates that he moved throughout the country on temporary assignments for [REDACTED] his employer. He indicates that because he moved so often during the relevant period, he does not have evidence of his temporary residences. The AAO cannot determine the veracity of the applicant's statements because they are inconsistent with the information that he has provided on his Form I-687. Furthermore, the record contains a letter signed by [REDACTED] indicating that the applicant worked for his company beginning in 1980, in Houston, Texas and Atlanta, Georgia. This statement is inconsistent with the applicant's assertion that he was on temporary assignment with the company in Denver, Chicago and Orlando, Florida.

It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The absence of sufficiently detailed documentation to corroborate the applicant's claim of 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 inconsistencies noted, it is concluded that he has failed to establish continuous residence 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 on this basis.

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