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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: Office: NATIONAL BENEFITS CENTER FILE: 

APR 02 2012

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.

A handwritten signature in black ink, appearing to read "Perry J. Rhew".

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

The applicant, a native of India who claims to have lived in the United States since 1980, 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 on May 23, 2005. The record reflects that on September 12, 2006, the director denied the application, as abandoned, based on the applicant's failure to respond to a Notice of Intent to Deny (NOID) the application, which was issued on July 14, 2006. On October 12, 2010, the director issued a notice, informing the applicant of his right to appeal the decision to the Administrative Appeals Office (AAO). The director erred in initially denying the application based on abandonment pursuant to 8 C.F.R. § 103.2(b)(13).¹ Therefore, the director's September 12, 2006 decision is withdrawn.

On appeal counsel submits a statement asserting that the director erred in denying the application. Counsel contends that the applicant has submitted sufficient evidence to establish his continuous unlawful residence in the United States for the requisite period. Counsel submits no new or additional evidence with the appeal. The AAO has considered counsel's assertions, reviewed all of the evidence in the record, 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.²

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).

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

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 2:86-cv-01343-LKK-JFM.

²The 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).

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).

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.

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. Here, the applicant has failed to meet his burden. 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 primarily of witness statements. The AAO has reviewed each document in its entirety to determine the applicant's eligibility; however, the AAO will not quote each witness statements in this decision. Some of the evidence indicates that the applicant resided in the United States after May 4, 1998; however, because evidence of residence after May 4, 1988 is not probative of his residence in the United States during the requisite period, the AAO will not discuss them.

The AAO notes that the applicant has provided conflicting statements and documentation in support of his application. The record reflects that on May 11, 2005, the applicant signed a statement detailing his interview with Federal and New York Police Department agents on April 25, 2005. At the interview, the applicant stated that he came to the United States in 1982 with a valid visa, that he lived in the Bronx for about eight or nine years, that he moved to Miami, Florida, for about two to three years, and then returned to live in New York City from 1990 to 1999. He also stated that he traveled outside the United States on three occasions; in 1993, 1996 and 1998. He did not testify to any other travel outside the United States during the 1980s.

On the Form I-687 the applicant filed on October 12, 1990 and on the current Form I-687, the applicant claimed that he entered the United States in 1980, without inspection, and that he traveled outside the United States in 1983, 1987, 1993, 1996 and 1998. On the two Form I-687s, the applicant listed his employers in the United States as Super Meat Deli, Valley Stream, New York, from 1980 to 1986; R&K Grocery, Forest Hills, New York, from 1986 to 1988; and Sun Garden Motel, Miami, Florida, from 1988 to 1990. The applicant did not submit any documentation to support the employment history he listed on the two Form I-687s. The applicant did submit a notarized statement, dated January 9, 2001, from a [REDACTED] which was prepared on a City Apparel letterhead. [REDACTED] claims that she has known the applicant since 1983, and that the applicant worked with her and her husband at one of their businesses, [REDACTED] Restaurant, as a kitchen helper. The AAO notes that the applicant did not list Yam Ling Restaurant as one of his employers in the United States during the 1980s or at any other time.

The contradictory statements and information provided by the applicant regarding his initial entry into the United States, the manner of his entry into the United States, his employment history in the United States and his absences from the United States during the requisite period, call into serious question the veracity of his claim that he had continuously lived in the United States in an unlawful status for the requisite period as well as the credibility of the documents he has submitted in support of the claim.

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 without competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N

Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See id.*

As discussed above, the applicant has provided conflicting information and documentation in support of his application. The applicant has provided no independent or objective evidence to justify or reconcile the contradictions. Therefore, the remaining documentation in the record consisting primarily of witness statements from individuals who claim to have employed, or otherwise known the applicant in the United States during the 1980s – is suspect and not credible.

The statement of employment from [REDACTED] claiming that the applicant was employed at Yam Ling Restaurant, does not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because the statement did not specify the duties and responsibilities of the applicant, did not provide specific periods of employment, including periods of layoffs, did not list the applicant's address during the period of employment, did not indicate whether the information about the applicant was taken from company records, did not indicate where the records are kept and whether such records are available for review. While [REDACTED] claims that she has known the applicant since 1983, she has not provided information as to the applicant's whereabouts prior to 1983. [REDACTED]'s statement is not supplemented by copies of W-2s, earnings statements or tax records to demonstrate that the applicant was actually employed at the restaurant during the period indicated. In addition, the statement of employment from [REDACTED] is inconsistent with the employment information provided by the applicant on the Form I-687s. In view of the substantive shortcomings and the inconsistencies discussed above, the AAO finds the statement is not credible and has little probative value. It is not persuasive evidence that the applicant resided in the United States before January 1, 1982 through the requisite period.

As for the other statements in the record from individuals who claim to have known the applicant in the United States during the 1980s, they have minimalist or fill-in-the-blank formats with very little input by the authors. The statements provide very few details about the applicant's life in the United States and the nature and extent of their interactions with him over the years. The statements are not accompanied by any documentary evidence – such as photographs, letters, and the like – demonstrating the authors' personal relationships with the applicant in the United States during the 1980s. The authors did not provide any documentation to establish their identities and their residence in the United States during the requisite period. For all the reasons discussed above, the statements are of questionable credibility. They have little probative value as evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through the requisite period.

Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that he is eligible for the benefit sought. The various 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.

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.