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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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DATE:

APR 17 2012

Office: LOS ANGELES, CA

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.

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 in Los Angeles, California. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a native of Mexico who claims to have lived in the United States since November 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 January 9, 2006. On March 8, 2007, the director erroneously denied the application finding that the applicant abandoned the application, pursuant to 8 C.F.R. § 103.2(b)(13), by failing to respond to a Request for Evidence (RFE) dated January 9, 2006.¹ Because the director erred in denying the application based on abandonment, on October 12, 2010, the Director, National Benefits Center, notified the applicant of his right to appeal the decision to the AAO. On July 22, 2011, the Director, Los Angeles, California, issued an Amended Decision denying the application on the grounds that the applicant had failed to establish by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status from before January 1, 1982 through the requisite period.

On appeal the applicant asserts that he has submitted documentation to establish that he has lived in the United States since 1976. The applicant requests that his application be reconsidered so that he can continue the process to legalize his status in the United States. The AAO has considered the applicant's assertions, 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.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).

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 does not have the authority to adjudicate a motion to reconsider. However, we will treat the present matter as an appeal and will conduct the 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).

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).

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 affidavits from witnesses. The AAO has reviewed each document in its entirety to determine the applicant's eligibility; however, the AAO will not quote each 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 reflects that during his interview on November 30, 2006, the applicant testified that he first entered the United States in November 1980, and that he traveled outside the United States to Mexico on two separate occasions since his entry in 1980. His first trip was from April to May 1987, and the second trip was in November 1997 for one month. The record reflects that the applicant was apprehended by immigration officials on December 13, 1997 at the [REDACTED] while attempting to enter the United States by presenting a valid Form I-551 belonging to another person. The applicant was expeditiously removed from the United States to Mexico on the same date. It is unclear when and how the applicant returned to the United States after he was removed in December 1997. The applicant testified that his spouse came to the United States in June 1981 and that she returned to Mexico in February 1982. He also testified that he has five children, all of whom were born in Mexico. He provided their dates of birth as [REDACTED]

On the current Form I-687 he filed on January 9, 2006, the applicant indicated his residential address in the United States from November 1980, and his employment information from December 1980. The applicant indicated that he traveled outside the United States once, from April to May 1987. The applicant does not indicate any other trips outside the United States. However, as indicated above, the applicant was apprehended by immigration officials in December 1997, which suggests that he must have traveled outside the United States to Mexico following his May 1987 return. At the time of his apprehension, the applicant provided his residential address as [REDACTED]. It is noted that this address is inconsistent with the address the applicant provided on the Form I-687 as his residence at that time.

The record contains copies of the birth certificates of some of the applicant's children. According to the documents, the dates of birth of the children are, [REDACTED]. Based on the applicant's testimony, the information on the Form I-687 and other documentation in the record, the applicant must have been in Mexico sometime

in 1985 to account for the conception and birth of his child in May 1986. As the applicant did not indicate any trip to Mexico in 1985, the record strongly suggests that the applicant must have departed the United States on more occasions than he had indicated and/or remained in Mexico for a longer duration thereby disrupting his continuous residence in the United States for the requisite period. The documents also call into question the veracity of the applicant's statements that he has continuously resided in the United States from before January 1, 1982 through May 4, 1988. The contradictions discussed above call into question the credibility and the reliability of the affidavits in the record from witnesses attesting to the applicant's continuous residence in the United States during the requisite period.

The only evidence the applicant submitted in support of his claim of continuous residence in the United States during the requisite period consists of a series of minimalist and fill-in-the-blank affidavits from individuals who claim to have personal knowledge that the applicant entered the United States before January 1, 1982 and has continuously resided in the country through the requisite period. The affidavits are very general in nature, providing very few details about the applicant's life in the United States such as where he lived, or worked and the nature and the extent of their interactions with him over the years. While the affiants claim to have personal knowledge of the applicant's entry into the United States in 1980 or 1981, they failed to provide independent evidence of how they acquired the knowledge that the applicant entered and continuously resided in the United States for the requisite period. The affidavits are not supplemented by any documentary evidence – such as photographs, letters, and the like – demonstrating the affiants' personal relationships with the applicant in the United States over the years they claim to have known him. Some of the affiants provided documents to establish their identity, however, none provided evidence to establish their residence in the United States during the requisite period. For all the reasons discussed above, the AAO finds that the affidavits have little probative value. They are not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through the date he filed the application.

The AAO finds that 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 discussed above are material to the applicant's claim in that they have a direct bearing on the applicant's residence and employment 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 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 lack of primary evidence of his residence during the requisite period.

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.