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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**



[REDACTED]

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DATE: **APR 17 2012** Office: LOS ANGELES 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, Los Angeles, California. 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. The director denied the application on May 23, 2011, finding that the applicant had not submitted sufficient 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.

On appeal, counsel states that the United States Citizenship and Immigration Services (USCIS) erred in finding the applicant did not establish that he has lived continuously in the United States since 1980 through the present. Counsel states the fact that the applicant used a different name, [REDACTED] is established by documentary evidence. Counsel states that he will submit a brief within 30 days. To date, no additional evidence has been received. Therefore, a decision will be rendered based on the evidence of record.

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 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. Evidence of residence and/or affiants that claim they met the applicant after May 4, 1988 is not probative of residence during the requisite time period, and shall not be discussed.

The applicant claims in his class membership determination form and sworn statement that he entered the United States without inspection in July 1980. His Form I-687 application indicates that the applicant resided in California for the entire requisite period. The applicant also states that he used the name [REDACTED] from July 1980 to present date.

The applicant submitted, as proof of his asserted date of entry into the United States and continuous residence in the United States during the requisite period, an affidavit from [REDACTED] that is a fill-in-the-blanks declaration. [REDACTED] states that he is personally acquainted with the applicant and that the applicant resided with him in California. The affiant does not give the address they resided at together but states the applicant resided in California from 1980 to 1987. In the declaration, the declarant gave little information about the applicant and the events surrounding their association during the requisite period. Therefore, the affidavit will be given nominal value.

The applicant provided a letter from the [REDACTED] signed by the president, [REDACTED] which states that the applicant has been a member of the organization from 1980 to 1991. The applicant did not claim to be affiliated with any organizations on his initial and current Form I-687 applications. The regulation at 8 C.F.R. § 245a.2(d)(3)(v) provides requirements for attestations made on behalf of an applicant by churches, unions, or other organizations. Attestations must (1) identify applicant by name; (2) be signed by an official (whose title is shown); (3) show inclusive dates of membership; (4) state the address where applicant resided during membership period; (5) include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; (6) establish how the author knows the applicant; and (7) establish the origin of the information being attested to. The letter gives the applicant's address at the time of his membership as [REDACTED]

The applicant provided the following documents under the alias/assumed name of [REDACTED]

- An income tax amnesty application for the 1986 tax year.
- A letter from the Internal Revenue Service (IRS) regarding overdue tax for the tax period ending December 31, 1986.
- A notice of deficiency regarding the tax year ending December 31, 1986.
- A letter from the [REDACTED] regarding the 1986 tax year.
- A copy of a notice regarding state income tax past due.
- A social security statement showing earning from 1981 through 1987 addressed to [REDACTED]
- A social security card bearing the name [REDACTED]
- A paper showing [REDACTED] was hired on October 15, 1984.
- 1985 and 1986 US Individual Income Tax Returns for [REDACTED]
- 1984, 1986 and 1987 Form W-2, Wage and Tax Statements for [REDACTED] showing employment with [REDACTED]

- 1985 Form W-2, Wage and Tax Statement for [REDACTED] showing employment with [REDACTED]
- A letter addressed to [REDACTED] regarding an insurance form that needed to be completed.
- A copy of a dental bill for services rendered to [REDACTED]
- Two letters addressed to [REDACTED] a past due dental bill dated January 2, and February 5, 1986.
- [REDACTED]
- A letter indicating shares purchased by [REDACTED]
- Copies of four action notice forms for change in pay rate for [REDACTED] 1985 and 1986.
- Copies of earning statements from [REDACTED] for the years 1984, 1985, 1986 and 1987.

The applicant claims that [REDACTED] is his alias name. Although this name was given as another name used by the applicant, the applicant has not submitted sufficient evidence to establish that [REDACTED] and the applicant, [REDACTED], are the same persons.

8 C.F.R. § 245a.4(b)(4) states:

(iii) *Assumed names* – (A) *General*. In cases where an applicant claims to have met any of the eligibility criteria under an assumed name, the applicant has the burden of proving that the applicant was in fact the person who used that name. The applicant's true identity is established pursuant to the requirements of paragraph (b)(4)(i) and (ii) of this section. The assumed name must appear in the documentation provided by the applicant to establish eligibility. To meet the requirement of this paragraph, documentation must be submitted to prove the common identity, *i.e.*, that the assumed name was in fact used by the applicant.

(ii) *Proof of common identity*. The most persuasive evidence is a document issued in the assumed name which identifies the applicant by photograph, fingerprint or detailed physical description. Other evidence which will be considered are affidavit(s) by a person or persons other than the applicant, made under oath, which identify the affiant by name and address, state the affiant's relationship to the applicant and the basis of the affiant's knowledge of the applicant's use of the assumed name. Affidavits accompanied by a photograph which has been identified by the affiant as the individual known to affiant under the assumed name in question will carry greater

In the instant case, the applicant has not submitted sufficient evidence to establish that [REDACTED]

The affidavit from [REDACTED] states that he knows the person whose photograph is found at the bottom of his affidavit. The affiant identifies the person in the photograph as the applicant, [REDACTED] and states that he met him in July 1980. The affiant states that they became good friends and kept in touch but does not give the frequency and how they kept in touch. The affiant does not state where the applicant resided during the requisite period and does not fully explain the basis of his knowledge of the applicant's use of the assumed name. Therefore, this affidavit will be given nominal weight.

Further, the applicant claims on his Form I-687 application that he worked for the [REDACTED]. The Form W-2 submitted reflects work done in 1987 only under the assumed name.

The applicant submitted the following evidence bearing his own name [REDACTED]

- A copy of his California driver's license issued on September 22, 1983.
- A copy of the applicant's 1982-83 and 1984-85 [REDACTED] identification cards issued in [REDACTED]
- A copy of a letter from the Department of Motor Vehicles (DMV) regarding fines for traffic violations on January 1, 1988.
- A copy of aftercare instructions from [REDACTED] October 28, 1987.
- A copy of a medical statement for professional services performed dated November 19, 1987.
- A copy of an identification card from [REDACTED]
- A copy the applicant's payment card dated April 1, 1986 for an automobile purchased.
- A copy of the applicant's 1986 Used Vehicle identification card.
- A copy of an agreement to furnish an insurance policy but the date is not legible.
- A copy of the applicant's DMV registration issued April 21, 1986.

The applicant also submitted receipts dated in 1986, 1987 and 1988. The name, [REDACTED] appears on the receipt but some of the receipts bear no address. The applicant also submitted a copy of a receipt from the California Department of Motor Vehicles for renewal of the applicant's automobile registration dated April 18, 1988. This evidence will be given some weight.

The applicant also submitted copies of photographs but the places the photos were taken are not identified and the photographs are not dated. This evidence will be given no weight.

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 evidence of record, it is concluded that the applicant 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.