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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
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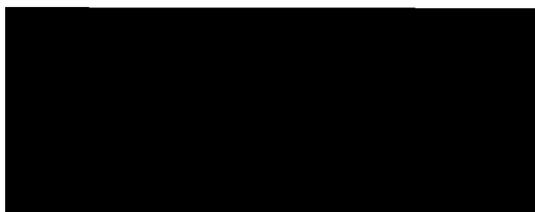
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Office: LOS ANGELES

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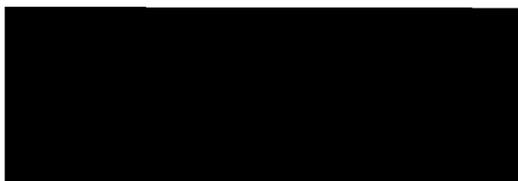


IN RE: Applicant:



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.


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. 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 (Act), and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet. The director denied the application on June 3, 2011, finding that the applicant did not submit sufficient evidence to establish that he entered the United States before January 1, 1982 and lived in the United States during the requisite period. The director also noted some inconsistencies in the record of proceeding.

On appeal, counsel states that more than 31 years have passed since the applicant entered the United States and that the applicant was nervous during his interview.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

Under the CSS/Newman Settlement Agreements, USCIS shall adjudicate each Form I-687 under the provisions of section 245A of the Act, regulations and administrative and judicial precedents which the Immigration and Naturalization Service (INS), now USCIS, followed in adjudicating the Forms I-687 timely filed during the Immigration Reform and Control Act of 1986 (IRCA) application period. See CSS/Newman Settlement Agreements.

An applicant who files for temporary resident status pursuant to the CSS/Newman Settlement Agreements 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 through the date of filing the Form I-687 during the original application period or through the date that the applicant attempted to file but was dissuaded from doing so by an agent of the INS. See *id.* and § 245A(a)(2)(A) of the Act.

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). 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).

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).

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.

The issue in this proceeding is whether the applicant 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.

In an attempt to establish continuous unlawful residence since before January 1, 1982 through the end of the relevant period, the applicant provided affidavits from [REDACTED]

The affidavit from [REDACTED] was dated July 2005 and states that he has known the applicant since 1980 and that they were co-workers “for the past 15 years.” In his affidavit, [REDACTED] states that he and the applicant are childhood friends and met in Los Angeles “somewhere around 1981.” The affiants do not indicate how they date their initial meeting with the applicant, how frequently they had contact with him, or how they have personal knowledge of his presence in the United States.

In his affidavit, [REDACTED] states that he has known the applicant since 1981 and the he has personal knowledge that the applicant has lived in the United States since 1980. [REDACTED] does not explain how he has personal knowledge that the applicant lived in the United States for one year

before meeting the applicant. Also, as noted by the director, [REDACTED] was born on [REDACTED] and was a child in 1981.

In his affidavit [REDACTED] states that he has personal knowledge that the applicant lived at [REDACTED] California from December 1980 to March 1983 and [REDACTED] California from April 1983 to September 1984. [REDACTED] also states that the applicant was his roommate and that they also worked together for cash. [REDACTED] does not provide the dates that he lived with applicant, the identity of their employer, or the dates when he worked with the applicant.

In his affidavit dated October 11, 1989, [REDACTED] states that he has known the applicant for 4 years and that he and the applicant are friends and former co-workers. [REDACTED] does not provide the name of the employer or the dates that he worked with the applicant.

The affidavits contain statements that the affiants have known the applicant for years and that attest to the applicant being physically present in the United States during the required period. These statements fail, however, to establish the applicant's continuous unlawful residence in the United States for the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality; 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.

The witnesses's statements do not provide concrete information, specific to the applicant and generated by the asserted associations with the applicant, which would reflect and corroborate the extent of those associations and demonstrate that they were a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the affidavit. To be considered probative and credible, witness affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Upon review, the AAO finds that, the witnesses' statements do not indicate that their assertions are probably true. Therefore, they have little probative value.

The record of proceeding also contains Internal Revenue Service (IRS) Form 1040; a photocopy of statement for the applicant dated December 6, 1986; a photocopy of a receipt dated July 24, 1987; a photocopy of a receipt dated February 23, 1988, and a photocopy of a paystub dated January 16, 1988. These documents are some evidence that the applicant was in the United States on those dates.

The applicant also submitted a 1986 IRS Form W-2 from employer [REDACTED] which lists the applicant's residence as [REDACTED]. However, the applicant failed to list this address as a residence in the initial Form I-687 application, filed in 1989 to establish his CSS class membership. Although the applicant lists this address as a residence in the instant Form I-687 application from February 1986 to May 1987, the applicant also lists a residence at [REDACTED] from October 1984 through the end of the requisite

period. The overlapping dates are incongruous. There are contradictions as to when and where the applicant resided. These contradictions are material to the applicant's claim in that they have a direct bearing on the applicant's residence in the United States for the duration of the requisite period.

The AAO notes that there is evidence in the record of proceeding that the applicant was arrested by the Los Angeles Police Department for *Possession Narcotic Controlled Substance* on February 27, 1988. (Los Angeles Police Department. Case number [REDACTED] While this is some evidence that the applicant was in the United States on that date, the record contains no disposition for this arrest, although the record reflects that the applicant requested a copy of an arrest report from the Los Angeles Police Department in 2006. An alien who has been convicted of a felony or three or more misdemeanors in the United States is ineligible for temporary resident status. 8 C.F.R. § 245a.2(c)(1). The applicant failed to submit evidence to establish that he does not have a disqualifying criminal conviction that renders him ineligible for temporary resident status. This is another basis to deny the application.

On appeal, counsel argues that the director was concerned about the quantity of the affidavits submitted and not by the quality. As noted above, the affidavits in the record of proceeding provide few details about the applicant's presence in the United States. The affidavits provide little more than the dates when the affiants first met the applicant and the affiants do not state how they remember meeting him.

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.