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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

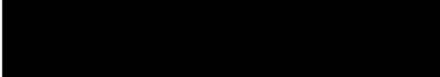


**U.S. Citizenship
and Immigration
Services**



L1

DATE: **AUG 27 2012** OFFICE: HOUSTON 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:



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 ink, appearing to read "Perry Rhew".

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, Houston. The Administrative Appeals Office (AAO) remanded the appeal, but will now withdraw its previous decision and reopen, *sua sponte*, the case. The appeal will be dismissed.

On April 12, 2005, the applicant submitted a Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (Act). On August 25, 2005, the director denied the I-687 application, finding that the applicant failed to respond to a Notice of Intent to Deny (NOID) issued by the director on July 19, 2005. In the NOID, the director noted that the applicant testified at a March 28, 2003 interview with the U.S. Citizenship and Immigration Services (USCIS) that he first entered the United States in January 1982. The director then denied the application noting that the applicant failed to submit a timely response to the NOID. The AAO finds that the applicant did submit a timely response to the NOID. The director then issued a Superseding Notice of Intent to Deny (SNOID) on November 18, 2009. The applicant submitted a timely response; however, the director denied the application on March 12, 2012.

The applicant filed a timely appeal of the NOD before the AAO, which was subsequently remanded. However, the AAO erred by treating the appeal as an appeal of the applicant's Form I-485 Application to Adjust Permanent Resident Status. Therefore, the AAO hereby withdraws, *sua sponte*, its previous decision, dated March 14, 2007. The appeal was reopened and, on July 23, 2012, the applicant was provided with an additional 21 days to address the issues noted by the director. As of the date of this decision, no brief and or additional evidence has been received; therefore, the record will be considered complete. The director's decision will be withdrawn and the AAO will consider the applicant's claim *de novo*, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.2(d)(6).¹

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

¹ The 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 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.* 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 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 he: (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. The evidence submitted in support of the applicant's claim to have arrived in the United States before January 1982 and to have resided in an unlawful status during the requisite period consists of affidavits from individuals claiming to know the applicant during the requisite period, an employment letter, several pay stubs, and money orders. The AAO has reviewed each document to determine the applicant's eligibility.

The affidavits from [REDACTED] are general in nature and state that they met the applicant in 1981. The 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 the affiants have a sufficient basis for reliable knowledge about the applicant's residence in the United States during the requisite period. For example, they fail to indicate how they date the applicant's initial acquaintance, or how they have personal knowledge of the applicant's continuous residence throughout the relevant period. 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.

The AAO further notes that the record contains several affidavits attesting to the applicant's continuous residence in the United States since 1981 which contain alterations. These affidavits are not credible and will not be considered.

The record also contains a letter from [REDACTED] who indicates that the applicant was employed with [REDACTED] beginning in 1982 until 1986 and with [REDACTED] from 1989 until 1991. The letter also states that the applicant was employed by [REDACTED] from 1989 until 1991.

This letter fails to conform to certain regulatory standards set forth at 8 C.F.R. § 245a.2(d)(3)(i), which provides that letters from employers must include the applicant's address at the time of employment; exact period of employment; whether the information as taken from official company records and where records are located and whether USCIS may have access to the records; if records are unavailable, an affidavit form-letter stating that the employment records are unavailable may be accepted which shall be signed, attested to by the employer under penalty of perjury and shall state the employer's willingness to come forward and give testimony if requested. The letter submitted includes only the dates of the applicant's employment, no other relevant information. For this reason, it will be given minimal evidentiary weight.

The record also contains several pay-check stubs from [REDACTED] that do not contain the applicant's name, along with money orders dated between the years 1981 and 1989. The AAO notes that the applicant claimed in his March 28, 2003 interview that he did not send the money orders dated in 1981 because he was not residing in the United States in 1981.

The record also contains several material inconsistencies. First, the applicant appeared at an interview with USCIS on March 28, 2003 in which he indicated that he first entered the United States in January 1982. He also indicated on his Form I-687 that he did not depart the United States during the relevant period. However, on his CSS/Newman Class Membership Worksheet, he indicated that he was turned away from filing his temporary resident application because he had traveled during the relevant period. These inconsistencies cast doubt on the reliability of the testimony and evidence that the applicant has presented.

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. 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 applicant was given an opportunity to reconcile the above inconsistencies, but failed to do so. The AAO finds the applicant's claim to lack credibility.

Based upon the foregoing, the AAO finds that 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 from before January 1, 1982 through 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.

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