

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

[REDACTED]

L1

Date: DEC 19 2012

Office: HOUSTON

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 director of the Houston office terminated the temporary resident status of the applicant. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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, or *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 approved on May 9, 2005. On May 14, 2012, the director of the Houston office terminated the temporary resident status of the applicant, finding the applicant to be ineligible for temporary resident status based on both a lack of documentation and inconsistent documentation in the record of proceedings.¹

On appeal, counsel asserts that the evidence which the applicant previously submitted establishes by a preponderance of the evidence that he continuously resided in the United States in an unlawful status for the duration of the requisite period. The applicant has not submitted any additional documentary evidence on appeal. The AAO has considered counsel'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

The temporary resident status of an alien may be terminated upon the determination that the alien was ineligible for temporary residence. Section 245A(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1255a(b)(2)(A), and 8 C.F.R. § 245a.2(u)(i).

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).

¹We note that the director also terminated the application on the basis that the applicant failed to establish that he was eligible for class membership pursuant to the CSS/Newman Settlement Agreements because he did not establish that he was front-desked or otherwise dissuaded from filing for legalization. Although the director determined that the applicant had not established that he was eligible for class membership she treated the applicant as a class member in adjudicating the Form I-687 application on the basis of his admissibility, as well as whether the applicant had established continuous residence in the United States for the requisite period. Consequently, the applicant has neither been prejudiced by nor suffered harm as a result of the director's finding that the applicant had not established that he was eligible for class membership. The adjudication of the applicant's appeal as it relates to his admissibility and his claim of continuous residence in the United States since prior to January 1, 1982 shall continue.

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).

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. 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 his eligibility for temporary resident status. As stated, the applicant must establish 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. 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 of witness statements. The AAO has reviewed the documents in their entirety to determine the applicant's eligibility; however, the AAO will not quote each witness 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 period, it shall not be discussed.

The record contains witness statements from [REDACTED]. The statements are general in nature, and state that the witnesses have knowledge of the applicant's residence in the United States for the duration of the requisite statutory period.

Although the witnesses claim to have personal knowledge of the applicant's residence in the United States during the requisite period, the witness statements do not provide concrete information, specific to the applicant and generated by the asserted associations with him, 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 in the United States during the requisite period. For example, [REDACTED] residing on Sharpe Street in Houston, Texas, states that he sub-leased a room in his residence to the applicant from 1979, when he states the applicant first arrived to the United States, through the end of the requisite period. He states he saw the applicant daily during that time. He states that during the period the applicant lived with him the applicant worked as a mechanic for [REDACTED]. [REDACTED] states that he met the applicant in 1981 "through a friend" when the applicant was residing on Sharpe Street in Houston.

To be considered probative and credible, witness statements must do more than simply state that a witness knows an applicant and that the applicant has lived in the United States for a specific period. Their content must include sufficient detail from a claimed relationship to indicate that it probably did exist and that the witness, by virtue of that relationship, does have knowledge of the facts alleged. For instance, [REDACTED] do not state how they date their initial meeting with the applicant in the United States or specify social gatherings or other special occasions or social events when they saw and communicated with the applicant during the requisite period. In addition, [REDACTED] does not state how frequently he had contact with the applicant during the requisite period. The witnesses do not provide sufficient details that would lend credence to their claimed knowledge of the applicant's residence in the United States during the requisite period. For these reasons the AAO finds that the witness statements do not indicate that their assertions are probably true.

In addition, [REDACTED] has submitted two employment verification affidavits dated September 27, 2010 and September 30, 2010, respectively, and an unsigned affidavit dated May 6, 2005. In the affidavit dated September 27, 2010, Mr. [REDACTED] states his failure to sign the May

6, 2005 affidavit was an oversight and not intentional. In his September 30, 2010 affidavit, [REDACTED] states he is the owner of [REDACTED] in Houston, and that the applicant "worked for me in 1981 and worked at my company til (sic) 1987." In the unsigned affidavit, [REDACTED] states that the applicant worked for him between 1979 and 1991, "helping me around the shop and cleaning up," and that he saw the applicant weekly. The statements of the witness are inconsistent regarding the dates when the applicant worked at this particular location during the requisite period.

In addition, the applicant submitted the statement of [REDACTED] that he has known the applicant since 1980, when he met the applicant at the applicant's place of employment at [REDACTED]. He states that the applicant lived on Sharpe Street when they first met. However, [REDACTED] does state how frequently he had contact with the applicant during the requisite period, or how he dates his initial meeting with the applicant in the United States. Further, the statement of [REDACTED] is inconsistent with the September 30, 2010 affidavit of [REDACTED], in which [REDACTED] states the applicant's period of employment as being from 1981 to 1987.

Further, the employment verification affidavits of [REDACTED] do not meet the requirements set forth in the regulations, which provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment. The regulation at 8 C.F.R. § 245a.2(d)(3)(i) provides that letters from employers must include: (A) Alien's address at the time of employment; (B) Exact period of employment; (C) Periods of layoff; (D) Duties with the company; (E) Whether or not the information was taken from official company records; and (F) Where records are located and whether the Service may have access to the records. If the records are unavailable, an affidavit-form letter stating that the alien's employment records are unavailable and why such records are unavailable may be accepted in lieu of subsections (E) and (F). The witness's employment verification affidavits fail to comply with the above cited regulation because they lack considerable detail regarding the applicant's employment. For instance, the witness does not state the applicant's daily duties or the number of hours or days he was employed. Furthermore, the witness does not state how he was able to date the applicant's employment. It is unclear whether he referred to his own recollection or any records he may have maintained. Lacking relevant information, the affidavits regarding the applicant's employment fail to provide sufficient detail to verify the applicant's claim of continuous residence in the United States for the duration of the requisite statutory period. For these reasons, the witness's employment verification affidavits are of little probative value.

The remaining evidence in the record is comprised of copies of the applicant's statements, the I-687 application and a Form I-485, application to adjust to permanent resident status, filed contemporaneously with a Form I-130, petition for alien relative, on September 26, 1997 by the applicant's United States citizen wife. The AAO finds in its *de novo* review that the record of proceedings contains materially inconsistent statements from the applicant regarding the dates of his absences from the United States during the requisite period.

At the time of filing the I-687 application the applicant listed a residence in Houston on [REDACTED] through the end of the requisite period. The applicant listed self-employment as a mechanic from 1979 through the end of the requisite period, although he did not provide any specific locations where he worked in the United States during that period. The applicant did not list any absences from the United States during the requisite period.³

At the time of his interview on May 9, 2005, the applicant amended the I-687 application to indicate that he had one absence from the United States during the requisite period, in December 1987 to visit his mother in Mexico.⁴

The director of the Houston office set forth the lack of documentation and some of the above inconsistencies in the record of proceedings, in a notice of intent to terminate (NOIT) the applicant's temporary residence. The applicant responded to the NOIT, submitting additional witness statements from [REDACTED] who had previously submitted a statement into the record. These statements have been fully discussed above.

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 in the record regarding the dates when the applicant worked at particular locations in the United States during the requisite period, and the dates he was absent from the United States during the requisite period are material to the applicant's claim in that they have a direct bearing on his residence 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 self-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

³ At the time of filing the I-687 application, the applicant listed one absence from the United States after the requisite period, in 1997 to visit his family in Mexico.

⁴ We note that at the time of filing the I-485 application the applicant indicated that the date of his last arrival to the United States was in April 1991. This is inconsistent with the information provided at the time of filing the I-687 application and at the time of his interview on the I-687 application, at which times the applicant did not indicate he had any absences from the United States in 1991. While outside of the requisite period, the inconsistency calls into question the veracity of the applicant's testimony concerning his continuous residence in the United States during the requisite period.

applicant's claim that he maintained continuous residence in the United States throughout the statutory period, and thus are not probative.

We note that on August 21, 2003, removal proceedings were instituted against the applicant based upon his being inadmissible to the United States as an immigrant without an immigrant visa, pursuant to Section 212(a)(7)(A)(i)(I) of the Act, as amended, 8 U.S.C. § 1182(a)(7)(A)(i)(I). On November 9, 2005, the Immigration Judge approved a joint request to terminate the removal proceedings against the applicant, based upon the fact that the applicant had been granted temporary resident status. We further note regarding the applicant's inadmissibility under Section 212(a)(7)(A)(i)(I) that this ground of inadmissibility does not apply to legalization applicants, pursuant to section 245A(d)(2)(A) of the Act.

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. As the applicant has not overcome the basis for the termination of status, the appeal must be dismissed.

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