

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

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**



41

DATE: **FEB 10 2012** Office: OKLAHOMA CITY

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 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, Oklahoma City, Oklahoma. The director subsequently reopened the proceeding.¹ The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Following *de novo* review, the AAO found that that the director's basis for denial of the applicant's Form I-687 was in error. However, the AAO identified alternative grounds for denial of the application. Specifically, the AAO noted that the applicant failed to submit sufficient evidence to establish his continuous residence during the period.

On November 8, 2011, the AAO sent the applicant a notice informing the applicant of the inconsistencies and the deficiencies in his application and providing the applicant with an opportunity to submit additional 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. The applicant responded to the AAO's request.

The AAO has 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.

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).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), "until the date of filing" shall mean 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 shall be regarded as having resided continuously in the United States if, at the time of filing no single absence from the United States has exceeded forty-five (45) days, and the aggregate

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.

of all absences has not exceeded one hundred eighty (180) days during the requisite period, unless the applicant can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed. 8 C.F.R. § 245a.2(h)(1)(i).

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 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 support of his application the applicant submitted affidavits, letters from a previous employer and photographs. In response to the AAO's notice of deficiencies in the record on December 5, 2011, the applicant submitted a letter from his previous employer, [REDACTED] and an affidavit from [REDACTED]

The applicant indicated on his class determination form that he first entered the United States in 1980. In his Form I-687, he indicated he began residing in the United States in 1977.

The applicant claimed on his initial Form I-687 application that he worked at [REDACTED] as a kitchen helper from 1982 to 1988. This information conflicts with the applicant's current Form I-687 application where he states that he worked at [REDACTED] Oklahoma City, Oklahoma as a dishwasher from February 1977 to March 1990.

The applicant submitted two letters from [REDACTED] Oklahoma City, Oklahoma, who states in one letter dated December 12, 2001, that the applicant was an employee from 1977 thru 1990 and in another letter dated July 14, 1991, that the applicant was an employee in 1982.

In response to the AAO's notice of deficiencies, the applicant submitted a letter from [REDACTED] where she states she opened the restaurant in 1977 and closed in late 1983. In 1984, she states she reopened the restaurant and it remained open until 1990. She claims she wants to rectify her statement that the applicant was employed in 1977. [REDACTED] states in this letter that the applicant was employed from 1982 to 1990 but she has no records. The applicant states on his current Form I-687 application that he was employed at [REDACTED] Restaurant from February 1977. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Also, [REDACTED] states in her affidavit that the applicant worked with her from 1980-1982 potting plants in the greenhouse at [REDACTED]. The applicant also claimed to work at [REDACTED] on his initial Form I-687 application from 1980 to 1982. In response to the AAO's notice of deficiencies regarding the applicant's employment during the same time period, the applicant states that he had to work two or three jobs at a time and that's why it appears the applicant worked at [REDACTED] and [REDACTED] during the same time period. The applicant explains he worked at the restaurant from 7:00 AM to 3:00 PM and at the nursery from 4:00 PM to 9:00 or 10:00 PM.

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and, identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such

records are unavailable. The letter does not state the dates the applicant was working for [REDACTED], the applicant's duties, where the information concerning the applicant's employment was taken from and why there are no company records, and therefore, it will be given nominal weight.

The applicant submitted copies of three photographs that he states includes him in the photo but the photographs are not dated.

The applicant also provided a letter dated August 6, 1991 and signed by [REDACTED] which states that he has known the applicant for the past five years and that the applicant attended the church [REDACTED] on a part-time basis. 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 does not identify the applicant, show the title of the person who signed the letter, state the dates of the applicant's membership, state the address the applicant resided during the membership, state how the author knows the applicant, and state the origin of the information being attested to, and therefore, it will be given nominal weight.

The affidavits from [REDACTED] attest to having known or worked with the applicant and/or having knowledge of the applicant's residence(s) in the United States for all or part of the requisite period. [REDACTED] states that the applicant lived with him for two years (1984-1986) at [REDACTED] Oklahoma, however, the applicant never claimed to reside at this address on his Form I-687 applications. [REDACTED] states in her affidavit that she knows the applicant came to the United States before 1982 because her family told her. Therefore, the affiant was not attesting to something she had personal knowledge of. The declaration from [REDACTED] states that the applicant lived with him at [REDACTED] Oklahoma City, Oklahoma from February 1978 to January 1982 and at [REDACTED] Oklahoma City, Oklahoma from January 1982 to March 1990. The applicant never claimed to reside at [REDACTED] Oklahoma City, Oklahoma, on his initial and current Form I-687 applications.

For instance, besides attesting to the date they met the applicant, and the applicant's good moral character, [REDACTED] fail to indicate any other details in their affidavits that would lend credence to their claimed acquaintance with the applicant and the applicant's residence in the United States during the requisite period. [REDACTED] attests to playing baseball with the applicant and [REDACTED] attests to having worked with the applicant a couple of times but they did not give any information concerning these events in their affidavits. The information given in the affidavits does not establish that the affiants actually had personal knowledge of the events. Overall, all of the affidavits provided are deficient in detail and can be given little significant probative value.

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 detailed 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. 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, the witnesses do not state how they date their initial meeting with the applicant in the United States, or specify social gatherings, other special occasions or social events when they saw and communicated with the applicant during the requisite period. The witnesses also do not state how they keep in contact with the applicant and how frequently they had contact with the applicant during the requisite period. The applicants generally attest to the applicant's good moral character rather than their relationship with the applicant during the requisite period. The AAO finds that the witness statements 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.

While an applicant's failure to provide evidence other than affidavits shall not be the sole basis for finding that he failed to meet the continuous residency requirements, an application which is lacking in contemporaneous documents cannot be deemed approvable if considerable periods of claimed continuous residency rely entirely on affidavits which are considerably lacking in certain basic and necessary information. The affiants statements are significantly lacking in detail and do not establish that the affiants actually had personal knowledge of the events and circumstances of the applicant's initial entry and residence in the United States. The affidavits do not provide much relevant information beyond acknowledging that they knew the applicant for all or part of the requisite period. Overall, the affidavits provided are so deficient in detail that they can only be given nominal probative value.

An applicant applying for adjustment of status under this part has the burden of proving by a preponderance of evidence that he or she is eligible for adjustment of status under section 245a of the Act. 8 C.F.R. § 245a.2(d)(5). Here, the applicant has failed to meet his burden of proof.

Upon a *de novo* review of all of the evidence in the record, the AAO finds that the evidence submitted by the applicant has not established that he is eligible for the benefit sought. The evidence currently in the record is insufficient to establish the applicant's claim that he maintained continuous residence in the United States throughout the statutory period.

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.


Page 7

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