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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: **FEB 16 2012**

OFFICE: NEW YORK

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.

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, New York. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

On November 23, 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 September 18, 2006, the director of the New York office erroneously denied the I-687 application, finding that the applicant abandoned the application, pursuant to 8 C.F.R. § 103.2(b)(13), by failing to appear for a scheduled interview on June 1, 2006.¹ Because the director erred in denying the application based on abandonment, on September 29, 2010, the director of the National Benefits Center office issued a notice advising the applicant of the right to appeal the decision to the Administrative Appeals Office (AAO).

On December 19, 2010, the applicant submitted a Form I-694, Notice of Appeal of Decision Under Section 210 or 245A. On January 17, 2012, the AAO issued the applicant a Notice of Intent to Deny (NOID) and provided the applicant 21 days in which to respond or to provide additional evidence in support of his claim. In response, counsel submits additional evidence. 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).²

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.

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.

² 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).

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 two organizational letters and witness statements from two individuals claiming to know the applicant during the requisite period. The AAO has reviewed the documents to determine the applicant's eligibility. Some of the evidence submitted indicates that the applicant resided in the United States after the requisite period; however, because evidence of such residence is not probative of residence during the requisite time period, it shall not be discussed.

The record contains a declaration from [REDACTED] of the [REDACTED] in New York. The declarant states that the applicant has been attending the organization for many years. The declaration does not conform to regulatory standards for letters from organizations as stated in the regulation at 8 C.F.R. § 245a.2(d)(3)(v). The declaration fails to state the applicant's dates of membership and the address where the applicant resided during membership period. Given this, the declaration provided little probative value as evidence in support of the applicant's claim.

In response to the AAO's NOID, counsel submits another organizational letter. The declaration from [REDACTED] of the [REDACTED] states that the applicant has been a regular visitor and their records indicate he has attended from July [REDACTED] until April [REDACTED]. The declaration does not conform to regulatory standards for letters from organizations as stated in the regulation at 8 C.F.R. § 245a.2(d)(3)(v). While the declaration states the applicant's current address of residence, the declaration fails to state where the applicant resided during membership period.

It is also noted the organization letters are inconsistent with the applicant's Form I-687. In his Form I-687, at Question #31, where asked to list all affiliations or associations, clubs, organizations, churches, unions, businesses, etc. to which the applicant belonged, the applicant failed to list he was ever a member or affiliated with any organization. Given the inconsistency and lack of details, the above declarations provide minimal probative value and will be given little weight as evidence in support of the applicant's claim.

The affidavits from [REDACTED] and [REDACTED] are general in nature and state that the applicant has resided in the United States for all, or a portion, of the requisite period. The statements fail 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 fill-in-the blank affidavits from [REDACTED] state that they have personally known the applicant since 1981 and 1986, respectively. The affiants fail to provide concrete details, such as the applicant's place of residence and work in the United States, how they date their first meeting with the applicant, or the circumstances of the applicant's residence during the requisite period, which would corroborate the extent of his relationship with the

applicant and demonstrate that the declarant has reliable knowledge about the applicant's residence during the time addressed in the statement. 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. Given the lack of concrete details, the affidavits provide minimal probative value and will be given minimal weight as evidence in support of the applicant's claim.

The record contains a Form I-130, Petition for Alien Relative, signed by [REDACTED]. In the Form I-130, the petitioner stated that the applicant arrived in the United States on January 12, 1992, entering without inspection. The record also contains a Form G-325A, Biographic Sheet, signed by the applicant under severe penalties for knowingly and willfully falsifying or concealing a material fact. On the Form G-325A, the applicant indicated that his last address outside of the United States for more than one year was in [REDACTED], where he resided from March 1962 to December 1995. This information directly contradicts the applicant's claim to have entered the United States prior to January 1, 1982 and to have resided in the United States throughout the requisite period.

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). Neither counsel nor the applicant addressed this issue in their reply to the AAO's NOID. The AAO's NOID addressed to counsel was returned, unable to forward. It is noted that the applicant was ordered removed on July [REDACTED] and was arrested in January [REDACTED] by the New York City Police Department and charged with driving while intoxicated.

Upon review of the totality of the evidence in the record, the submitted documentation contains a lack of details and inconsistencies that cast serious doubt on the credibility of the applicant's claim of continuous residence during the requisite period.

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 such date 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 on this basis.

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