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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
and Immigration
Services**



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Date: **FEB 21 2012** Office: LOS ANGELES

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 of the Los Angeles office, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the I-687 application, finding that the applicant had not established by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status for the duration of the requisite period, based on both a lack of documentation and inconsistent documentation in the record of proceedings.

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. Counsel has submitted an additional document on appeal.¹ 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.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 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).

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) 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 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

¹ To explain inconsistencies referenced by the director between statements of Juan Manuel Noriega and that of the applicant regarding the applicant's residence address in 1979 to 1981, counsel has submitted a copy of a map, showing that the distance between South Gate, California and Lynwood, California is 1.7 miles.

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).

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. 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 and documents. The

AAO has reviewed each document in its entirety to determine the applicant's eligibility; however, the AAO will not quote the witness statements 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 time period, it shall not be discussed.

The record contains witness statements from the following witnesses:

The statements are general in nature, and state that the witnesses have knowledge of the applicant's residence in the United States for all, or a portion of, the requisite 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. 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 frequently they had contact with the applicant during the requisite period, or provide a particular location where the applicant resided during that 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] states that he and the applicant were roommates in 1979, and that the applicant resided from January 1979 to January 1980 in [REDACTED] and from January 1980 through the end of the requisite period in South Gate. [REDACTED]

[REDACTED] also state that the applicant resided in South Gate from 1980 through the end of the requisite period. However, the testimony of the witnesses is inconsistent with the testimony of the applicant in the instant I-687 application, in which the applicant states that he resided in South Gate from 1979 to 1981, in [REDACTED] from 1981 to 1986, and in [REDACTED] from 1986 through the end of the requisite period. As stated above, on appeal counsel for the applicant has submitted a map showing that the distance between the cities of [REDACTED] is 1.7 miles. However, this document does not explain the inconsistencies between the testimony of the applicant and these witnesses regarding when the applicant resided at particular locations in

the United States during the requisite period. Due to these inconsistencies, the testimony of these witnesses has diminished probative value.

The applicant has submitted an employment verification letter from [REDACTED], owner of [REDACTED], who states that the applicant worked for her as a gardener from 1979 to 1984. However, the employment verification letter of [REDACTED] is inconsistent with the testimony of the applicant in the instant I-687 application, and in the initial I-687 application filed in 1990, in which the applicant failed to list this company as an employer during the requisite period. In the two I-687 applications, the applicant stated that he was self-employed for the duration of the requisite period.

In addition, the employment verification letter of [REDACTED] does 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 letter fails to comply with the above cited regulation because it lacks considerable detail regarding the applicant's employment. For instance, the witness does not state the applicant's daily duties, or the location at which he was employed. Furthermore, the witness does not state how she was able to date the applicant's employment. It is unclear whether she referred to her own recollection or any records she may have maintained. Lacking relevant information, the letter regarding the applicant's employment fails 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 all of the above reasons, the witness's employment verification letter is of little probative value.

The record contains two birth certificates for the applicant's daughters, born in Los Angeles on September 24, 1984 and December 17, 1986, respectively. The record also contains copies of 12 postmarked stamped envelopes, sent by the applicant from residence addresses in California, with postmark dates in 1979 (one envelope), 1980 (one envelope), 1981 (six envelopes), 1982 (one envelope), 1984 (one envelope) and 1987 (two envelopes). However, the envelope postmarked in 1984 lists an address for the applicant on [REDACTED] California, which the applicant failed to list, in the instant I-687 application, as a residence during the requisite period.³ The envelopes postmarked in 1987 list an address for the applicant on [REDACTED] California. However, the applicant failed to list a residence on [REDACTED] in the instant I-687 application, and in the initial I-687 application filed in 1990. Due to these inconsistencies, the AAO finds that envelopes postmarked in 1984 and 1987 have minimal probative value. The remaining documents are some evidence in support

³ The AAO notes that the applicant listed a residence on Illinois Street in the initial I-687 application filed in 1990.

of the applicant's residence in the United States for some part of 1979, 1980, 1981, 1982, 1984 and 1986.

While some of the above documents indicate that the applicant resided in the United States for some part of the requisite period, considered individually and together with other evidence of record, they do not establish the applicant's continuous residence for the duration of the requisite period.

The remaining evidence in the record is comprised of copies of the applicant's statements, the instant I-687 application, an initial I-687 application, signed by the applicant in 1990 and filed to establish the applicant's CSS class membership and a Form I-485, application to adjust to permanent resident status under the Legal Immigration Family Equity (LIFE) Act, filed in 2001. The AAO finds in its *de novo* review that the record of proceedings contains materially inconsistent statements from the applicant regarding the dates when the applicant resided at particular locations in the United States, the dates of the applicant's self-employment during the requisite period, and the dates of his absences from the United States during the requisite period.

At the time of filing the instant I-687 application, the applicant lists residences in California from 1979 to 1981 at [REDACTED], from 1981 to 1986 at [REDACTED] and from 1986 through the end of the requisite period on [REDACTED]. The applicant did not list any absences from the United States during the requisite period. At the time of his interview on January 25, 2006, the applicant amended the instant I-687 application to state that he had four or five absences from the United States since 1982, but stated he could not remember any of the dates of his absences. He listed self-employment from 1981 through the end of the requisite period, but he did not state the nature or location of his occupation during that period.

In the initial I-687 application, signed by the applicant on July 25, 1990, the applicant listed his residence from 1986 through the end of the requisite period at [REDACTED]. The applicant listed one absence from the United States during the requisite period, in July 1987. He listed self-employment as a gardener February 15, 1979 through the end of the requisite period.

In a class member worksheet signed by the applicant on July 25, 1990, the applicant stated that he first entered the United States on February 15, 1979.

At the time of an interview on March 6, 1991, the applicant stated that he was absent from the United States from June 4, 1987 to June 30, 1987.

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 resided at particular locations in the United States, the dates of the applicant's self-employment and the dates of the applicant's absences from the United States during the requisite period, are material to the applicant's claim in that they have a

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

The record reveals that on June 15, 1992, the applicant was arrested for violations of the California Vehicle Code (VC), section 23152 (a), *under the influence of alcohol/drug in vehicle*, and 23152(b), *.08% more weight alcohol while driving vehicle*. On June 22, 1992, the applicant pleaded guilty to a violation of section 23152(b), *.08% more weight alcohol while driving vehicle*, a misdemeanor, and the remaining count was dismissed. Also on that date, the applicant's plea was accepted, the applicant was convicted, imposition of sentence was suspended, and the applicant was placed on summary probation for three years. (Municipal Court of Los Angeles, Metro Branch Judicial District, case number [REDACTED]) One misdemeanor conviction does not affect the applicant's eligibility for temporary resident status.

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.