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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**



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DATE: **FEB 24 2012**

OFFICE: SAN JOSE

FILE:

IN RE: Applicant:

PETITION: 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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

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, San Jose, California. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record indicates that the applicant filed a Form I-687 Application for Temporary Resident Status on August 1, 2005. On October 26, 2006, the director denied the application noting that the applicant failed to appear at a scheduled interview with United States Citizenship and Immigration Services (USCIS). Thus, the director indicated that the application was abandoned.

USCIS subsequently informed the applicant that pursuant to a recent court order, applications for temporary resident status may not be denied based on abandonment. He was informed that he was entitled to file an appeal with AAO which must be adjudicated on the merits. That appeal is now before the AAO.

The Administrative Appeals Office (AAO) subsequently issued a Notice of Intent to Deny withdrawing the director's grounds for denial and requesting further information regarding the applicant's continuous residence in the United States during the relevant period. The applicant was afforded 21 days to respond to the NOID. The applicant submits additional affidavits in response to the NOID.

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 finds that the applicant has failed to establish his continuous residence in the United States from January 1, 1982 throughout the relevant period.

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).

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 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.

In the initial filing, the applicant failed to submit any evidence of either his entry to the United States prior to January 1, 1982 or his continuous residence in the United States for the duration of the relevant period.

The AAO noted that the applicant provided inconsistent testimony regarding his residence during the relevant period. He signed a G-325A Biographic Information on March 14, 1994 in connection with an application for asylum in which he testified that he resided in [REDACTED] from December 1969 until August 1993. On appeal, the applicant indicates that this address is his father's

home and that he listed it in connection with a nonimmigrant visa application. He provides no independent objective evidence of his assertions.

The AAO further notes that on October 30, 1998 an immigration judge granted the applicant voluntary departure from the United States with an alternate order of deportation to India should the applicant fail to depart pursuant to 8 C. F. R. § 240.26(d). On December 9, 2003, the judge ordered that the applicant failed to depart and he was ordered removed. The applicant departed the United States on January 22, 2006 while the order of removal was pending thus self-executing the order.

In response to the NOID, the applicant submitted two additional affidavits, along with a written statement from [REDACTED]. The first affiant, [REDACTED] indicates that he has known the applicant since March 1981 and that the applicant lived with him throughout the entire relevant period at [REDACTED]. The affiant does not provide any additional details of their residence, or objective evidence supporting his statements. The second affiant, [REDACTED] indicates that he has known the applicant since 1983 and that the applicant attended his wedding in 1983 in Yuba City, California. Taken together, the documents submitted in response to the NOID fail to overcome the deficiencies noted.

While an applicant's failure to provide evidence other than affidavits shall not be the sole basis for finding that he or she failed to meet the continuous residency requirements, an application which is lacking in contemporaneous documentation cannot be deemed approvable if considerable periods of claimed continuous residence rely entirely on affidavits which are considerably lacking in certain basic and necessary information. As discussed above, 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 residence in the United States, beyond stating his address during the relevant period.

Finally, the applicant submits a written statement dated January 25, 2012, signed by [REDACTED], [REDACTED] of [REDACTED] indicating that the applicant has been a member since 1982. This letter does not conform to the statutory requirements for attestations by churches, unions, or other organizations, which is found at 8 C.F.R. § 245a.2 ((d)(3)(v)). That regulation requires such attestations to "show the inclusive dates of membership and state the address where the applicant resided during the membership period." [REDACTED] does not provide the applicant's address during the relevant period or any other information that is probative of the issue of his initial entrance to the United States or his continuous residence for the duration of the statutory period.

Therefore, 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 entire 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.