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

On January 6, 2006, 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 April 19, 2011, the director of the Los Angeles office denied the I-687 application, finding that the applicant failed to establish his entry into the United States prior to January 1, 1982, and his continuous residence in the United States throughout the requisite period.

On May 19, 2011, counsel, on behalf of the applicant, submitted a Form I-694, Notice of Appeal of Decision Under Section 210 or 245A. Counsel asserts that director erred in denying the instant application for Status as a Temporary Resident. Counsel contends that the director relied on immaterial inconsistencies and the applicant has met his burden of proof. Copies of previously submitted evidence were submitted on appeal. 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).¹

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 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).

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).

On his Form I-687, the applicant did not list any residences until September 1984. The first employment he listed commenced in 2000.

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 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 affidavits from five individuals claiming to know the applicant during the requisite period. The AAO has reviewed the document 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 affidavits from [REDACTED] are general in nature and state that the applicant resided in the United States for all 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.

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.

The affidavit from [REDACTED] states that he met the applicant in September 1980 in Los Angeles when applicant came to live with him. The affidavit fails to provide specific details of the affiant's first meeting with the applicant, the nature of their relationship, their place of residence during the time addressed or the length of time they resided together. The lack of specific details provides little probative value; therefore, the affidavit will be given minimal weight as evidence in support of the applicant's claim.

The affidavit from [REDACTED] states that he met the applicant in March 1952² in Mexico and again in December 1978 in Los Angeles. The affidavit fails to state the nature of their relationship or how the affiant dates their meeting in Los Angeles. The affiant states that the applicant arrived at his residence at [REDACTED], stayed for a few days and then moved to [REDACTED]. The affidavit fails to state the date the applicant resided with the affiant. In the applicant's Form I-687, he stated that he resided on [REDACTED] beginning in 2002. It appears the affiant was referencing a time period outside of the requisite period. Given the lack of details, the affidavit provides minimal probative value and will be given little weight as evidence in support of the applicant's claim.

² The applicant indicated on his Form I-687 that he was born on March 8, 1952.

The affidavit from [REDACTED] states that he has known the applicant in Los Angeles from January 1, 1982 to 2006 and they have been good friends since 1960. The affidavit from [REDACTED] states that she has known the applicant since 1978 to the present and references the applicant's moral character. The affidavits fail to provide specific details of the affiants' first meeting with the applicant, the nature of their relationship, or the basis of their knowledge of the applicant's residence during the time addressed. Lacking relevant details, the affidavits provide minimal probative value and will be given little weight as evidence in support of the applicant's claim.

The affidavit from [REDACTED] states that he met applicant in December 1979 in Los Angeles at New Year's Eve party, the applicant moved into his home in 1984 and resided there for three years until the applicant moved out. The affidavit is inconsistent with the applicant's Form I-687 in which the applicant stated that he resided at one address from 1984 through 1998. This inconsistency casts doubt on the credibility of the affiant's statement. The director noted this inconsistency but the applicant failed to address this issue on appeal.

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).

The above documentation contains inconsistencies and fails to provide specific details which would reflect and corroborate a reliable knowledge of the circumstances of the applicant's residence for the length of time claimed by the witnesses. Upon a *de novo* review of all of the evidence in the record, the AAO finds that the applicant has not established that he is eligible for the benefit sought.

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.