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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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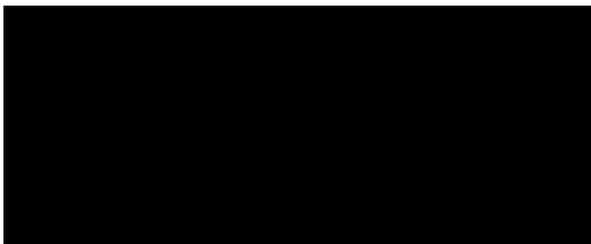
Applicant:



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:



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

A review of the record reveals the following procedural history. The applicant filed his Form I-687 Application for Temporary Resident Status pursuant to the terms of the CSS/Newman settlement agreements on September 13, 2004. On May 13, 2006, the director, Los Angeles, denied the application noting that the applicant failed to respond to a Form I-72 Request for Evidence (RFE) issued by United States Citizenship and Immigration Services (USCIS). The director indicated that the application had been abandoned and therefore, pursuant to 8 C.F.R. § 103.2(b)(13), shall be denied.

The applicant's motion to reopen the denied Form I-687 was subsequently granted. The application was adjudicated on its merits and on February 14, 2011, denied a second time. The director stated that the applicant failed to establish his continuous residence in the United States for the duration of the relevant period. The director noted several inconsistencies in the applicant's testimony and deficiencies in the record. The director also noted that the applicant still had not provided the documentation requested in the Form I-72.

On appeal, the applicant, through counsel, asserts that he has established his unlawful residence for the requisite time period and that his representative hand delivered his response to the RFE to the Los Angeles office of USCIS. The applicant indicates that his RFE response includes income tax returns for the years 1984 until 2004 and additional written statements.

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 of the entire record, the AAO finds that the applicant has not overcome the reasons for denial cited by the director. The appeal will be dismissed.

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.

The issue in this proceeding is whether the applicant (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status for the duration of the relevant period. The documentation contained in the record which supports the applicant's continuous residence for the duration of the relevant period consists of the following:

- A written statement from [REDACTED] who indicates that he employed the applicant from 1980 until 1989. He does not indicate the name of his business or organization, where the applicant was employed, in what capacity, or any other details of the employment. This letter fails to meet certain regulatory standards set forth at 8 C.F.R. § 245a.2(d)(3)(i), which provides that letters from employers must include the applicant's address at the time of employment; exact period of employment; whether the information was taken from official company records and where records are located and whether USCIS may have access to the records; if records are unavailable, an affidavit form-letter stating that the employment records are unavailable may be accepted which shall be signed, attested to by the employer under penalty of perjury and shall state the employer's willingness to come forward and give testimony if requested. [REDACTED] statement is void of all the requirements noted in 8 C.F.R. § 245a.2(d)(3)(i) and therefore, can be afforded minimal probative weight.
- Three written statements from Rosa Freedman. In the first statement, dated September 23, 1993, the declarant indicates that she met the applicant in early 1981 when he would perform gardening work at her home. In the second statement, dated April 10, 2000, [REDACTED] that she met the applicant in April 1981 and that he was living in [REDACTED] at that time. The third statement, dated July 12, 2005 contradicts the first two statements. [REDACTED] indicates that she met the applicant in 1980. The declarant does not indicate how she dates her acquaintance with the applicant nor does she indicate how frequently during the relevant period she saw him. Due to the inconsistencies and deficiencies noted, these affidavits will be given minimal weight.
- An affidavit from [REDACTED] stating that the applicant worked with him at Rincon Tree Service from 1983 until 1990. At an interview with USCIS on June 8, 2005, the applicant indicated that he worked for [REDACTED] beginning in 1990. The applicant was informed of this inconsistency in the Notice of Denial, however, he fails to address it on appeal. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the application. *Id.* at 591.
- Affidavits from [REDACTED] and [REDACTED] who indicate only that they have known the applicant since a time prior to the relevant period and that he lived in [REDACTED], California from 1979 until 1991. However, at his interview with USCIS,

the applicant indicated that he lived on a ranch in [REDACTED] California from 1978 until 1990 and that he did not move to [REDACTED], California until 1990. This inconsistency casts doubt on the reliability of the affidavits noted.

Beyond the decision of the director, the AAO notes that the applicant lists an absence on his Form I-687 from October 1985 until January 1986. This absence exceeds the 45-day limit for a single absence during the relevant period and interrupts any continuous residence the applicant may have established.

The applicant shall be regarded as having resided continuously in the United States if at the time the application for temporary resident status is considered filed, as described above pursuant to the CSS/Newman Settlement Agreements, no single absence from the United States has exceeded 45 days, and the aggregate of all absences has not exceeded 180 days during the requisite period unless the applicant can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the applicant was maintaining a residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.2(h).

If the applicant's absence exceeded the 45-day period allowed for a single absence, it must be determined if the untimely return of the applicant to the United States was due to an "emergent reason." Although this term is not defined in the regulations, *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), holds that "emergent" means "coming unexpectedly into being." The applicant has not addressed the issue of his absence on appeal.

It is also noted that the record contains a Form G-325A Biographic Information in which the applicant indicates that he has two children born in Mexico during the relevant period. [REDACTED] was born February 27, 1983 and [REDACTED] was born June 10, 1985. It is unclear if the applicant's spouse came to the United States or if the applicant departed the United States on additional occasions not listed on the Form I-687.

The AAO further notes that on appeal, the applicant indicates that his agent hand-delivered copies of the applicant's tax returns for the years 1984 until 2004. However, in his interview with USCIS on June 8, 2005, the applicant testified that he had only filed tax returns for the five previous years. The record does not contain any tax returns for the relevant years, only for tax years 2002 and 2004.

As is stated above, 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). The applicant has been given the opportunity to satisfy his burden of proof with a broad range of evidence pursuant to 8 C.F.R. § 245a.2(d)(3).

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of this claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the applicant's reliance upon inconsistent affidavits with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the end of the relevant 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.