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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

**PUBLIC COPY**



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DATE: Office: HOUSTON  
**JAN 26 2012**

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 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.

*Elizabeth McCormack*

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, Houston. The matter 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 December 8, 2005. On September 21, 2007, the director denied the application noting that the applicant failed to comply with the director's request for evidence (RFE). In her decision the director noted that the applicant failed to submit a Form I-693, Report of Medical Examination and Vaccination Record and a Form I-765, Application for Employment Authorization. Thus, the director indicated that the application was abandoned.

On October 12, 2010, U.S. Citizenship and Immigration Services (USCIS) informed the applicant that, pursuant to a recent court order, applications for temporary resident status may not be denied based on abandonment.<sup>1</sup> The applicant was informed that he was entitled to file an appeal with the AAO which must be adjudicated on the merits.

On appeal, counsel states that the director's decision was not clear and that the applicant submitted some of the evidence requested in the RFE. Counsel also submits evidence of a U.S. Postal Service return receipt signed and dated April 2, 2007.

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 found that that the director's basis for denial of the Form I-687 was in error. The AAO notes that the record of proceeding contains a Form I-765 signed by the applicant on March 28, 2007. Therefore, the AAO withdraws the director's statements regarding the applicant's failure to file the Form I-765. However, the AAO identified alternative grounds for denial of the application. Specifically, the AAO noted that the applicant failed to submit sufficient evidence in support of his application.

On December 8, 2011, the AAO issued a notice of intent to deny (NOID) informing the applicant of the deficiencies in the record and providing him with an opportunity to respond. In response to the AAO's NOID, the applicant submitted evidence outside of the requisite period, evidence already in the record, several affidavits, an employer letter, and a photocopy of a 1982 Internal Revenue Service (IRS) Form W-2.

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<sup>1</sup> 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*, [REDACTED]

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. 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.* at 80. 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.

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 (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 of time.

In an attempt to establish continuous unlawful residence since before January 1, 1982 through the end of the relevant period, the applicant provided written statements from [REDACTED], and [REDACTED].

The AAO notes that the statements from [REDACTED], [REDACTED], and [REDACTED] state that they have known the applicant for 24 years, but they do not state that they met the applicant in the United States or that they have had any personal interactions with the applicant in the United States. In an affidavit signed by [REDACTED] and [REDACTED], on December 18, 2011 the affiants state that the applicant visited them at [REDACTED] in May 1982. A separate affidavit from [REDACTED] dated January 20, 2006 states that he used to live in the same apartment complex at [REDACTED]. The applicant did not list this address in his Form I-687 which lessens the credibility of the affiants.

The declarations contain statements that the declarants have known the applicant for years and that attest to the applicant being physically present in the United States during the required period. These statements fail, however, 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 witnesses' statements do not provide concrete information, specific to the applicant and generated by the asserted associations with the applicant, 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 during the time addressed in the affidavit. 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. Upon review, the AAO finds that, the witnesses' statements, without more, do not indicate that their assertions are probably true.

The applicant also provided a letter on [REDACTED] letterhead signed by [REDACTED], president and dated September 30, 2005. The letter states that the applicant worked as a laborer in the sod grass field in 1981 and 1982. The AAO notes that the applicant stated in the Form I-687 that he worked for [REDACTED] from October 1980 to January 1983. The applicant also submits an employer letter in response to the AAO's NOID signed by [REDACTED] and dated December 14, 2011. [REDACTED] states that the applicant worked for River Creek Farms, Inc. in 1982. [REDACTED]

states that the applicant's duties included growing and harvesting turf grass. The applicant also submitted a 1982 IRS Form W-2 listing River Creek Farms, Inc. as his employer.

The applicant also submitted a notarized letter signed by [REDACTED] dated December 19, 2011. In his letter, [REDACTED] states that he has known the applicant since 1984 and that he communicates with the applicant on a weekly basis. [REDACTED] states that he and the applicant worked together for several companies including Environmental Trees and Procelas Tree Services and that these companies are no longer in business. Finally, [REDACTED] states that the applicant worked for US Tree Experts for at least one year while the company was managed by [REDACTED] and that [REDACTED] retired and [REDACTED] is now the owner.

The letters 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. The letters submitted do not include much of the required information and can only be accorded minimal weight as evidence of the applicant's residence in the United States for the duration of the requisite period.

The AAO notes that the applicant did not list [REDACTED] as an employer in his Form I-687. In addition, the address listed on the 1982 IRS Form W-2, [REDACTED], is inconsistent with the address listed on the applicant's Form I-687. In the Form I-687, the applicant listed [REDACTED] Texas as his address from January 1980 to January 1983.

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. 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. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The record also contains photocopies of a Texas driver's license and identification card with an April 2, 1987 expiration date. This is some evidence that the applicant was in the United States prior to April 2, 1987. In her brief, counsel states that the license was issued 5 or 6 years prior to the expiration date and submits a photocopy of a Texas Drivers Handbook revised in October 2008 as evidence that the applicant's license was valid for 6 years from the date issued. The photocopy of a handbook is not sufficient evidence that the applicant's license was issued 6 years before the due date. The record contains no Texas Department of Public Safety (DPS) record indicating that the applicant received a license 5 or 6 years before the expiration date. Nevertheless, the address on the identification card is consistent with the applicant's address listed on the Form I-687 during the time period from 1984 to 1986. This evidence tends to support the applicant's claim of residence in the United States in 1984.

In response to the AAO's NOID counsel stated that the applicant owned a car in 1983 but was unable to submit evidence of ownership because the record search would take 2 to 3 weeks. Counsel submitted a copy of a Texas DPS Form DR-1 stating that customers should "allow 2-3 weeks for delivery." The assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The applicant has submitted no evidence that he owned a car in 1983. See 8 C.F.R. § 103.2(b)(7)(iv).

Based on the evidence, the AAO finds that it is more likely than not that the applicant resided in the United States during some portion of the requisite period, from before January 1, 1982 to 1984. However, the evidence does not establish the applicant's continuous residence throughout the requisite 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 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.