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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: **JUL 10 2012**

OFFICE: LOS ANGELES, CA

FILE:

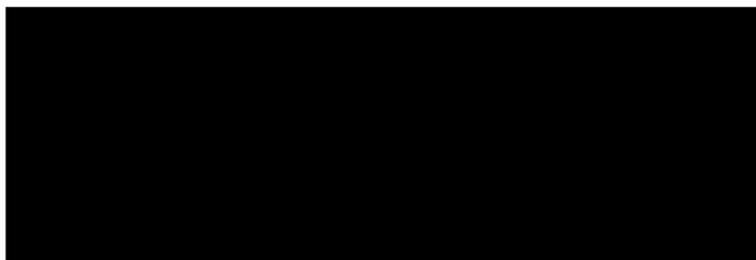


IN RE: Applicant:



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. The file has been returned to the National Benefits Center. 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.

Thank you,

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, or *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 Field Office Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record indicates that the applicant is a native of Mexico who claims to have resided in the United States since 1978. He filed an application for temporary resident status under section 245A of the Act (Form I-687), together with a Form I-687 Supplement, CSS/Newman (LULAC) Class Membership Worksheet, on January 9, 2006.

On June 9, 2011, the director denied the application after determining that the applicant had failed to establish his eligibility for temporary resident status. The director noted that in an attempt to establish his continuous unlawful residence and physical presence in the United States during the requisite period the applicant provided numerous affidavits and letters. However, the evidence provided lacked sufficient detail. The director also noted that the applicant submitted inconsistent applications.

On appeal, counsel asserts that the applicant has provided sufficient documentation to establish his eligibility for temporary resident status. Counsel submits a statement from the applicant and additional declarations from witnesses.

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.¹

An applicant for temporary resident status – under section 245A of the Immigration and Nationality Act (the Act) – 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. See 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. See 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. See 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. See CSS

¹The 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).

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).

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 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 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.

Although the regulations provide an illustrative list of contemporaneous documents that an applicant may submit, the list also permits the submission of affidavits and any other relevant document. *See* 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant’s employment must: provide the applicant’s address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant’s duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he continuously resided in the United States in an unlawful status from before January

1, 1982 through the date he attempted to file a Form I-687 during the original one-year application period that ended on May 4, 1988. After reviewing the entire record, the AAO determines that he has not.

The record includes the following evidence submitted by the applicant:

Affidavits & Declarations:-

- 1) A declaration from [REDACTED] stating that she learned of the applicant's arrival from conversations by her family members who were discussing the applicant's arrival and residence in the United States. Ms. [REDACTED] also states that the applicant is a family friend; and that she recalls that the applicant would take her and a cousin to a store to buy candy; that the applicant would attend family gatherings every weekend at the [REDACTED]; and, that they have maintained a close relationship;
- 2) Declarations from [REDACTED] the applicant's brothers, stating that the applicant came to California in 1980 and that he resided with them at the same apartment complex located at [REDACTED] and, that they attended family gatherings together. [REDACTED] also states that from 1980 to 1990 he and the applicant worked together.
- 3) A declaration from [REDACTED] the applicant's brother, stating that the applicant came to the United States in December 1978 and resided in Texas; that in 1980 the applicant came to reside with him in Los Angeles, California, until 1990; that he helped the applicant get a job with his employer, [REDACTED] and, that together they attended family gatherings.
- 4) A declaration from [REDACTED] stating that he first met the applicant in November 1982 while the applicant was painting a friend's house in Los Angeles. Mr. [REDACTED] also states that the applicant informed him that he came to California in 1980 and that he resided with a brother in Los Angeles, California; that he and the applicant are friends; that they visited each other and participated in family gatherings; and, played baseball together.
- 5) A declaration from [REDACTED] stating that she first met the applicant in November 1987 at a family gathering in Los Angeles. Ms. [REDACTED] also states that she and the applicant lived at the same apartment complex, located at [REDACTED] that the applicant informed her that he entered the United States without documentation in 1979; that the applicant's brother is married to her sister; and, that she and the applicant see each at family gatherings and that they maintain a relationship.

- 6) A declaration from [REDACTED] stating that she first met the applicant in January 1982 while she visited the applicant's brother's home in Los Angeles. Ms. [REDACTED] also states that the applicant's brother told her that the applicant arrived from Mexico in 1980 and had been living with him at [REDACTED] that the applicant informed her of his 1979 journey crossing the border; that she frequently conversed with the applicant and attended weekend activities with him; and, that the applicant and her husband worked together in Camarillo, California.
- 7) A declaration from [REDACTED] stating that he first met the applicant at a family party in January 1980 at [REDACTED]. Mr. [REDACTED] also states that he and the applicant would meet frequently at parties and family gatherings.
- 8) A declaration from [REDACTED] stating that she first met the applicant in 1980 at a family gathering at the apartment complex where the applicant resided with his brother in Los Angeles. Ms. [REDACTED] also states that she and the applicant became friends and that they spent time together, such as attending weekend family reunions, birthday parties, and Thanksgiving and Christmas gatherings.
- 9) A declaration from [REDACTED] stating that he first met the applicant in January 1982 at the applicant's brother's home at [REDACTED]. Mr. [REDACTED] also states that the applicant's brother informed him that in 1980 the applicant came to live with him. He also states that he and the applicant are friends and that they meet frequently at parties and family gatherings.
- 10) A January 14, 2006 letter from [REDACTED] stating that he has known the applicant since 1981; that he respects and appreciates the applicant; and, that the applicant is a hard worker.
- 11) A January 20, 2006 notarized letter from [REDACTED], attesting that he has known the applicant to have resided in Los Angeles or Ventura County since 1981. Mr. [REDACTED] also attests to the applicant's character.
- 12) Notarized letters from [REDACTED] Mr. [REDACTED] attests that he first met the applicant in January 1980 through his employment in the construction business. Mr. [REDACTED] attests that he met the applicant in February 1979 through an acquaintance. [REDACTED] attests that he met the applicant in 1981 when they worked together in the painting industry and became friends. The affiants also attest to the applicant's sense of responsibility, dependability, and work habits.

Contrary to counsel's assertion, the record lacks sufficient evidence to establish the applicant's continuous unlawful residence and physical presence during the requisite period. The affidavits provided lack detail and do not establish the applicant's continuous residence. For example, several

of the affiants attest to essentially the same facts, that they met the applicant at the same place where he resided, were told that he had been residing with his brother in Los Angeles since 1980, and that they attended events like Christmas and birthday parties together. However, the affiants do not provide specifics as to how they date their acquaintance with the applicant in the United States, and during what years they socialized with the applicant. We note the long passage of time since the requisite period expired. However, in that several of the affiants attest to their family relationship and friendship with the applicant as well as to his character, it is reasonable to expect that they would be able to provide details of their acquaintance and activities with the applicant, and how they maintained contact after they met. The affidavits are, therefore, not probative of the applicant continuous residence.

In addition, the record of proceedings contains a California DMV photo identification card for the applicant, dated August 6, 1984; two photographs purportedly depicting the applicant outside his residence at [REDACTED] and, a check cashing card with an April 30, 1987 date of issue. It cannot be determined when and where the photographs were taken. The photographs are, therefore, not probative of the applicant's residence. The identification and check cashing cards indicate the applicant's presence in the United States on August 6, 1984, and on April 30, 1987, but do not establish his continuous residence.

The applicant has submitted questionable documentation. Specifically, the record includes an [REDACTED] Check from [REDACTED] which appears to have been altered to indicate that it was issued on January 4, 1987, to the applicant for a 1984 Chevy Blazer vehicle. It is also noted that the document indicates the applicant's address as [REDACTED]. However, the applicant does not indicate on his Form I-687 that he resided at that address until 1994. This discrepancy casts doubts on the authenticity of the document provided in support of his claim of continuous residence. 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 lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the discrepancy in his testimony and in the record. Therefore, the reliability of the remaining evidence offered by the applicant is suspect and it must be concluded that the applicant has failed to establish that he continuously resided in the United States in an unlawful status during the requisite period.

As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. 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 documents 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 May 4, 1988.

Based on the foregoing analysis of the evidence, the AAO concludes that the applicant has failed to establish his continuous unlawful residence in the United States throughout the requisite period.

Thus, the record does not establish that the applicant entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from that date through the date he attempted to file a Form I-687 during the original one-year application period that ended on May 4, 1988. Accordingly, the applicant is ineligible for temporary resident status under section 245A(a)(2) the Act.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.