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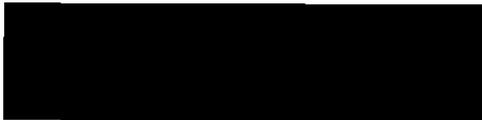
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

L1



DATE: JUL 17 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:

SELF-REPRESENTED

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

On June 2, 2005, 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 March 22, 2012, the director of the Los Angeles office denied the I-687 application, finding that the applicant's sworn statement lacked credibility and the applicant failed to provide credible affidavits in support of his claim. Specifically, the director determined that the applicant's testimony to have last returned to the United States in 1988 was not credible in light of his five children being born in Mexico from 1997 through 2004.

On April 24, 2012, the applicant submitted a Form I-694, Notice of Appeal of Decision Under Section 210 or 245A. On appeal, the applicant reconciles the noted discrepancy by stating that he understood the question to pertain to his last entry into the United States during the requisite period. The AAO finds the applicant's statement to be credible. This portion of the director's decision will be withdrawn. It is noted that, in the Notice of Denial, the director stated the declarant "fails to provide corroborating evidence to substantiate" his claimed employment. The director cannot impose new requirements beyond the regulations; therefore, this portion of the director's decision will be withdrawn as well. 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 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

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).

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.* 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 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 established he: (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. 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 one employment affidavit and affidavits from six individuals

claiming to know the applicant during the requisite period. The AAO has reviewed the document to determine the applicant's eligibility.

The record contains an employment affidavit from [REDACTED]. The affiant states that the applicant worked for his company, [REDACTED] from December 1981 to February 1987. Pursuant to the regulation at 8 C.F.R. § 245a.2(d)(3)(i), the affiant failed to provide the applicant's address at the time of employment, 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 affidavit from [REDACTED] states that he worked as a driver in the above company and that the applicant worked for the same company from December 1981 to February 1987 as an independent and ambulatory sales man of ice cream. The affiant makes a general statement, but fails to provide specific details regarding the applicant's employment during the stated time period to corroborate his claim.

It is noted that the affidavits from [REDACTED] and [REDACTED] are inconsistent with the applicant's Form I-687 application. In his Form I-687, the applicant stated that he only worked for one company, [REDACTED] from 1981 to the present. This inconsistency detracts from the credibility of the affiants. Given the inconsistencies, the affidavits carry little weight as evidence in support of the applicant's claim.

The affidavits from [REDACTED] are general in nature and state that they have known the applicant in the United States for all, or a portion, of the requisite period. The 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 the affiants have a sufficient basis for reliable knowledge about the applicant's residence in the United States during the requisite period. For example, the affiants fail to state how they date their initial acquaintance with the applicant. [REDACTED] and [REDACTED] state that the applicant sold ice cream, but they fail to provide additional details. [REDACTED] form affidavit lists the applicant's places of residence but fails to provide specific details regarding the circumstances of the applicant's residence during the time period. Lacking specific details, the statements are not deemed credible and shall be afforded little weight as evidence in support of the applicant's claim.

The affidavits from [REDACTED] state that the applicant resided with him from November 1980 to March 1985 and lists of the applicant's residences during the requisite period. The affiant fails to provide sufficient details which would reflect and corroborate the claimed five year relationship. The affiant fails to provide specific details regarding the applicant's place of employment or other activities during the time period addressed. Given the lack of details, the affidavit carries minimal weight as evidence in support of the applicant's claim.

The evidence, in totality, provides a general account of the applicant's claimed residence in the United States during the requisite period 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. The inconsistencies further detract from the applicant's claim. 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 AAO finds that the applicant has failed to establish by a preponderance of the evidence that he continuously resided in an unlawful status in the United States from before January 1, 1982 through 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.