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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**

[REDACTED]

L1

DATE: **JUL 19 2012**

Office: NEW YORK

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

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:

[REDACTED]

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 J. 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 District Director (director), New York, New York. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director erroneously denied the I-687 application, finding that the applicant abandoned the application, pursuant to 8 C.F.R. § 103.2(b)(13), by failing to appear for a scheduled interview on June 20, 2006.¹ Because the director erred in denying the application based on abandonment, on October 4, 2010, the director, National Benefits Center issued a notice advising the applicant of his right to appeal the decision to the AAO. The record reflects that on May 11, 2011, the applicant requested for a copy of the Record of Proceedings (ROP). Said request was processed on February 8, 2012.² On May 8, 2012, the AAO withdrew the director's decision. The matter is now before the AAO on Appeal.

On May 8, 2012, the AAO issued a Notice of Intent to Deny (NOID), regarding the Form I-687 application, informing the applicant of the deficiencies in the record and providing him with an opportunity to respond. Specifically, the AAO requested the applicant to provide evidence that he entered the United States before January 1, 1982, and that he continuously resided in the United States in an unlawful status since such date for the duration of the requisite period. The AAO informed the applicant that the single affidavit he submitted in support of his entry and continuous residence in the United States and the statement he submitted in support of his employment in the United States during the requisite period are substantively deficient and not credible. The applicant was granted twenty-one (21) days to submit rebuttal evidence and/or additional evidence in support of his application. The record reflects that the applicant did not submit response to the NOID. The AAO will deem the record as complete and will make a *de novo* decision based on the record and the AAO's assessment of the credibility, relevance, sufficiency and the probative values of the evidence as required by the regulation at 8 C.F.R. § 245a.2(d)(6).³

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).

¹ 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*, Case 2:86-cv-01343-LKK-JFM.

² NRC2011052263.

³ 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).

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 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 for the requisite period of time. The AAO finds that the applicant has failed to meet this burden.

At the time of completing his Form I-687 application, the applicant indicated that he resided in Brooklyn, New York from June 1981 to March 1985, that he resided in North Miami, Florida, from April 1985 to June 1986, and in July 1986, he returned to New York and lived in Brooklyn from July 1986 through May 1989. The applicant did not indicate any absence from the United States during the requisite period. The applicant indicated that he was employed as a construction worker in Brooklyn, New York, from September 1981 to March 1985, as sod worker in Miami, Florida, from April 1985 to June 1986, and as a construction worker in Astoria, New York, and Woodside, New York, from July 1986 throughout the requisite period.

In support of his claimed entry before January 1, 1982 and his continuous residence in the United States through the requisite period, the applicant submitted a photocopy of a notarized statement from [REDACTED] dated May 20, 1990. [REDACTED] states that he has personal knowledge that the applicant entered the United States in June 1981 because he met the applicant at a Christmas party on December 25, 1981 and the applicant told him that he entered the United States in June 1981. [REDACTED] states that when he met the applicant, the applicant was looking for a place to live and that he helped the applicant get an apartment at [REDACTED] [REDACTED] Brooklyn, New York.

The AAO finds that [REDACTED] statement is inconsistent with the information the applicant provided on the Form I-687. We note that [REDACTED] could not have helped the applicant secure the apartment indicated above because the applicant was already residing at the apartment before he met [REDACTED] on December 25, 1981. It is incumbent upon the applicant to resolve any inconsistency in the record by independent 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. *Matter of Ho*, 19 I & N Dec. 582, 591-592 (BIA). The applicant has not provided a reasonable explanation for this inconsistency.

We also note that while [REDACTED] claims to have knowledge of the applicant's residence in the United States from before January 1, 1982, he has failed to provide concrete information,

specific enough to the applicant and generated by the asserted associations with him, 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 in the United States during the requisite period.

To be considered probative and credible, witness statements must do more than simply state that a witness knows an applicant and that the applicant has lived in the United States for a specific period. Their content must include sufficient detail from a claimed relationship to indicate that it probably did exist and that the witness, by virtue of that relationship, does have knowledge of the facts alleged. In this case, ██████████ claims "I visited [the applicant] numbers of times in different personal, religious, cultural, and social occasions since we became good friends over the period of times." But, ██████████ did not provide specify social gatherings, other special occasions, or social events where they saw and communicated with the applicant during the requisite period. He did not state how frequently he had contact with the applicant during the requisite period. ██████████ does not provide sufficient details that would lend credence to his claimed knowledge of the applicant's residence in the United States during the requisite period. For these reasons, the AAO finds that the witness statement does not indicate that his assertions are probably true.

The record also contains a copy of "Employer Declaration Certificate" signed by ██████████ and dated May 20, 1990, in support of the applicant's employment and residence in the United States during the requisite period. ██████████ who identified himself as Farm Labor/Owner, states that the applicant worked 113 man-days at his farm as a sod worker from April 1, 1985 to June 30, 1986. The AAO finds that the statement from ██████████ does not comport with the regulatory requirements at 8 C.F.R. § 245a.2(d)(3)(i) because it does not provide details of the applicant's duties and responsibilities, and does not indicate whether there were periods of layoffs, which seems likely given the fact that the applicant was employed as an agricultural worker.

The remaining evidence in the record is comprised of the applicant's statements and the Form I-687 application. As stated previously, 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 the evidence produced by the applicant will be judged according to its probative values and credibility. 8 C.F.R. § 245A.2(D)(6). Here, the applicant has failed to provide probative and credible evidence of his continuous residence in the United States for the duration of the requisite period.

Based upon the AAO's review of all the evidence of record, we find that the applicant has failed to overcome the evidentiary deficiencies noted in the NOID. Therefore, upon a *de novo* review of all of the evidence in the record, the AAO finds that the applicant has failed to establish that he has continuously resided in the United States in an unlawful status for the duration of the requisite period.

Accordingly, 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.