

Administrative Appeals Office  
U.S. Citizenship and Immigration Services  
Washington, DC 20529-2090

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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]

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DATE: **JUN 05 2012**

Office: HOUSTON

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

The applicant submitted a Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act. The director denied the application on February 3, 2012, finding that the applicant had not submitted sufficient evidence to establish 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.

On appeal, counsel states that the evidence submitted exceeds the requisite preponderance of evidence standard. Counsel claims that the applicant has met his burden of proof establishing that he first entered the United States before January 1, 1982 and that he resided continuously in an unlawful status for the requisite period.

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).

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 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).

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. 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. 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 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 throughout the requisite period. Evidence of residence after May 4, 1988 is not probative of residence during the requisite time period, and shall not be discussed.

In the director’s Notice of Intent to Deny (NOID) dated December 4, 2006, the director noted that the applicant had not established that he entered the United States prior to January 1, 1982 and that he resided continuously in an unlawful status in the United States throughout the requisite period.

The applicant was given 30 days to submit additional evidence in support of his application. The applicant did not respond to the NOID.

The applicant claims on his Form I-687 application that he first entered the United States without inspection through Laredo, Texas, in December 1980. The applicant claims on his Form I-687 application that he resided at 1838 Chamboard, Houston, Texas, from December 1980 to August 1982, at [REDACTED], from August 1982 to August 1987 and at [REDACTED] from August 1987 to July 1990.

The applicant submitted copies of two envelopes. The envelopes reveal a return address of [REDACTED], but each return address on the envelopes reveals a different apartment number. One envelope reads [REDACTED] and the other envelope reads [REDACTED]. On the applicant's initial Form I-687 application, the apartment number for that address reads [REDACTED]. The applicant does not claim to reside at [REDACTED] on his current Form I-687 application. Also, the envelopes contain postal meter marks rather than postage stamps; one of the postal meter marks reads April 4, 1986 but the applicant does not claim to reside at [REDACTED] on his current Form I-687 application and on his initial Form I-687 application, he did not reside at [REDACTED] until 1995. Also, it appears the applicant added his name above the name of [REDACTED] on the return address portion of the envelopes. Therefore, the probative value of the envelopes is nil.

No evidence in the record can resolve the inconsistencies stated above. 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 petitioner submits competent objective evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The applicant submitted, as proof of his asserted date of entry into the United States and continuous residence in the United States during the requisite period, witness statements from [REDACTED]. The declarants state in their declarations that they have known the applicant since the 1980s.

The declarants claim generally that since meeting the applicant, they have become good friends and that they have kept in touch and/or maintained their friendship but do not give the frequency of any social events and/or details about any event they attended with the applicant. The declarants attest to the applicant's good moral character but in general, the declarants give little information about the applicant and the events surrounding their association with him during the requisite period.

The declarations submitted by the applicant are judged according to their probative value and credibility and not the quantity of declarations submitted by the applicant. 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. The AAO finds that the witness statements do not provide sufficient detail. In many of the declarations which are noted, the declarants did not sufficiently explain the facts stated in their declarations. For the aforementioned reasons, the AAO finds that the witness statements can only be given nominal weight.

While an applicant's failure to provide evidence other than affidavits/declarations shall not be the sole basis for finding that he failed to meet the continuous residency requirements, an application which is lacking in contemporaneous documents cannot be deemed approvable if considerable periods of claimed continuous residency rely entirely on affidavits/declarations which are considerably lacking in certain basic and necessary information. The affiants' statements are significantly lacking in detail and do not establish that the affiants actually had personal knowledge of the events and circumstances of the applicant's initial entry and residence in the United States. The affidavits/declarations do not provide much relevant information beyond acknowledging that the affiants or declarants knew the applicant for all or part of the requisite period. Overall, the affidavits/declarations provided are so deficient in detail that they can only be given nominal probative value. USCIS is not required to contact affiants to verify the veracity of the testimony and to obtain additional evidence from the affiants. An applicant applying for adjustment of status under this part has the burden of proving by a preponderance of evidence that he or she is eligible for adjustment of status under section 245a of the Act. 8 C.F.R. § 245a.2(d)(5).

The record contains a letter dated October 4, 1993 and signed by [REDACTED] [REDACTED] Service that states the applicant has been with the company since September 5, 1982. [REDACTED] Landscaping states in his letter that the applicant worked for him as a laborer from December 3, 1980 to August 19, 1982. 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 letter signed by [REDACTED] does not state when the applicant resided at the addresses in the letter. Also, the letters do not state the applicant's duties and whether the information was taken from company records, records that the witness may have maintained or the witness's own recollection. Therefore, the letters will be given nominal weight.

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 entry into the United States prior to January 1, 1982 and 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 evidence of record, it is concluded that the applicant failed to establish that he entered the United States prior to January 1, 1982 and continuously resided in an unlawful status in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application 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.

It is also noted that the applicant was convicted of three misdemeanors. The minutes of the county criminal court reveal the applicant's offense and disposition rendered in each case. The applicant's offenses are listed as driving while intoxicated with a decision rendered on December 26, 1990, failure to stop and give information with a decision rendered on March 25, 1994 and driving while intoxicated with a decision rendered on March 25, 1994. The applicant was found guilty to all three offenses. Upon review, the applicant has not established that he is admissible to the United States as an immigrant since he had been convicted of three or more misdemeanors in the United States. Section 245A(a)(4). These grounds cannot be waived. Section 245A(d)(2)(B)(ii)(I).

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