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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

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U.S. Citizenship
and Immigration
Services

[REDACTED]

41

DATE: **JUN 07 2012**

OFFICE: OKLAHOMA CITY

[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. 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, 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, Oklahoma City. The decision is now before the Administrative Appeals Office (AAO) on appeal.¹ 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 May 1981. 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 October 19, 2004.

On August 30, 2007, the director denied the application because the applicant failed to respond to the director's notice of intent to deny (NOID). Thus, the director indicated that the application was abandoned. On April 22, 2011, the director issued an amended notice of decision stating that the decision was amended to reflect denial of status as a temporary resident and not denial as a class member.

The applicant was subsequently informed by U.S Citizenship and Immigration Services (USCIS) that pursuant to a recent court order, applications for temporary resident status may not be denied based on abandonment.² The applicant was informed that he is entitled to file an appeal with the AAO which must be adjudicated on the merits. That appeal is now before the AAO.

On appeal, the applicant states that he never received the director's NOID. The AAO notes that the director's NOID was mailed to the applicant's address of record, the same address listed in the Form I-694, Notice of Appeal of Decision Under Section 210 or 254A, and was not returned as undeliverable. The applicant submits additional written statements.

On April 17, 2012, 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 and provide additional evidence. Specifically, the AAO requested that the applicant provide evidence to establish his continuous unlawful residence and physical presence in the United States during the requisite period. In addition, the AAO noted that the record reflects that the applicant had prolonged absences that disrupt any continuous residence the applicant may have established.

In response to the NOID, the applicant asserts that due to the passage of time, it is difficult to gather evidence of his continuous residence in the United States and requests that a decision be

¹ There is evidence in the record of proceeding that indicates that the applicant is also known as

² 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.

made based on the evidence of record. The applicant submits additional evidence and some of the same evidence provided earlier.

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.³

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

The declarations submitted are not signed but most contain photocopies of the declarants' identification.

The statements are not probative of either the applicant's entry into the United States or his continuous residence throughout the relevant period. Further, the statements do not indicate how frequently they had contact with the applicant, or how each has personal knowledge of his presence in the United States.

In their declarations, state that they lived in Mexico or in El Salvador during the requisite period. These declarants were outside of the United States during the requisite period and therefore have no personal knowledge of the applicant's presence in the United States.

In his declaration, states that he knows of the applicant's entry into the United States before 1982 "by word of mouth." states that he first met the applicant in school in 1977 - 1978 but does not provide any information regarding the applicant's presence in the United States or when he first met the applicant in the United States.

In their declarations, and do not provide any information about the applicant's presence in the United States. In her declaration, states that she first entered the United States in 1987 but does not provide any information about the applicant's presence in the United States.

In his declaration, states that he met the applicant on special occasions, family reunions, and holidays. He also states that he spoke on the telephone with the applicant and that he and the applicant are related.

In his declaration, states that he learned that the applicant was in the United States from the applicant's brothers. states that he and the applicant are cousins and that they lived on the same block and that he would see the applicant every morning when he went to look for work. He also states that he and the applicant would visit each other after work and play baseball together on the weekends. does not provide any dates

³The 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).

for when these interactions took place, but he indicated that he resided in the United States during the requisite period.

In his declaration [REDACTED] states that he has been in the United States since 1985 but he knew that the applicant was in the United States from 1975 to 1985. [REDACTED] declaration is inconsistent with the applicant's Form I-687 in which he lists his first entry as May 1985.

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 declarations all contain statements that the declarants have known the applicant for years and they attest to his 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.

None of the witnesses's statements provide sufficient 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 affidavits. 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, individually and together, the witness statements do not indicate that their assertions are probably true. Therefore, they have little probative value.

The record of proceeding also contains a postmarked and stamped envelope dated May 13, 1987 listing the applicant's name and address. The address listed is consistent with the applicant's Form I-687. This is some evidence that the applicant was in the United States in 1987, but does not establish his continuous residence.

It is noted that the applicant was nine years old in 1981 and there is no evidence in the record of proceeding of his care and financial support as a minor during the requisite period. The record lacks evidence of school attendance and vaccinations in the United States, as well as evidence of being cared for by an adult during this period.

The Form I-687 lists three absences to Mexico to attend school during the requisite period. According to the Form I-687, the applicant was in Mexico from September 1981 to May 1982; September 1982 to May 1983, and September 1983 to May 1984. Each absence lasted at least 242 days and the three absences lasted at least 727 days combined.

An applicant shall be regarded as having resided continuously in the United States if at the time the application for temporary resident status is considered filed, as described above pursuant to the CSS/Newman Settlement Agreements, no single absence from the United States has exceeded 45 days, and the aggregate of all absences has not exceeded 180 days during the requisite period unless the applicant can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the applicant was maintaining a residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.2(h).

Continuous unlawful residence is broken if an absence from the United States is more than 45 days on any one trip unless the return could not be accomplished due to emergent reasons. 8 C.F.R. § 245a.2(h)(1)(i). "Emergent reasons" has been defined as "coming unexpectedly into being." *Matter of C*, 19 I&N Dec. 808 (Comm. 1988).

Since there is no evidence in the record of proceeding establishing an "emergent reason" as the cause for the applicant's failure to return to the United States in a timely manner, he has failed to establish by a preponderance of the evidence that he continuously resided in an unlawful status in the United States throughout 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, also ineligible for temporary resident status under section 245A of the Act on this basis.

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.