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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

PUBLIC COPY



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DATE: **MAR 13 2012**

Office: CHICAGO, IL

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. 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.

A handwritten signature in black ink, appearing to read "Perry J. Rhew".

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 Field Office Director (director) in Chicago, Illinois. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a native of Guatemala who claims to have lived in the United States since 1980, submitted a Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (Act), and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet on December 30, 2005. The record reflects that on April 23, 2007, the director denied the application, as abandoned, based on the applicant's failure to respond to a Request for Evidence (RFE), which was issued on May 10, 2006. On October 12, 2010, the director of the National Benefits Center, notified the applicant of his rights to appeal the decision to the Administrative Appeals Office (AAO). On March 10, 2011, the director, Chicago, Illinois, issued an Amended Notice of Decision, finding that the applicant had not established by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status for the duration of the requisite period. The director denied the application accordingly. The director erred in initially denying the application based on abandonment pursuant to 8 C.F.R. § 103.2(b)(13).¹ Therefore, the director's April 23, 2007 decision is withdrawn.

On appeal, counsel asserts that the director erroneously denied the application without carefully considering all the evidence provided by the applicant in support of his application. The AAO has considered the applicant's assertions, 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.²

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 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).

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.

²The 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 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 (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. Here, the applicant has failed to meet his burden. The documentation that the applicant submits in support of his claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists primarily of witness statements and a copy of an apartment lease. The AAO has reviewed each document in its entirety to determine the applicant's eligibility; however, the AAO will not quote each statement in this decision. Some of the evidence submitted indicates that the applicant resided in the United States after May 4, 1988; however, because evidence of residence after May 4, 1988 is not probative of residence during the requisite time period, it shall not be discussed.

The photocopied one-year apartment lease, between the applicant and [REDACTED] for [REDACTED] Illinois, beginning March 1, 1988 through February 28, 1989, was signed on February 3, 1988. The lease does not include notarial stamp or other official markings to authenticate the date indicated on the lease. Nor is it supplemented by copies of rental receipts, utility bills, or other documentation to show that the applicant actually resided at the [REDACTED] address during the year indicated. Additionally, the original lease is not in the record for verification. For all the reasons stated above, the AAO finds the apartment lease to be of little probative value. It is not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through the requisite period.

The record contains an affidavit dated November 26, 1991, from [REDACTED] who identified herself as the applicant's landlord. [REDACTED] claims that she knows that the applicant resided at [REDACTED], from April 1984 to February 1988. The record does not contain documentation to establish that [REDACTED] the property in question. Nor does the record contain evidence to establish [REDACTED] identity and residence in the United States during the requisite period. The affidavit is not supplemented by documents, such as rental receipts, utility bills, or the like to establish that the applicant actually resided at this apartment during the period indicated on the affidavit. For all the reasons discussed above, the affidavit from [REDACTED] has little probative value. It is not persuasive evidence of the applicant's continuous residence in the United States during the requisite period.

As for the statements from individuals who claim to have employed, lived with or otherwise known the applicant in the United States during the 1980s, they have minimalist or fill-in-the-blank formats with very little input by the individuals. The individuals provided very few details about the applicant's life in the United States and the nature and extent of their interactions with him over the years. The statements are not accompanied by any documentary evidence – such as photographs, letters, and the like – demonstrating their personal relationships with the applicant

in the United States during the 1980s. None of the individuals provided evidence of their own identity and residence in the United States during the requisite period.

The statements from the applicant's alleged employers do not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because the statements did not indicate the applicant's address during the period of employment, did not specify his duties and/or responsibilities, did not indicate whether the information about the applicant was taken from company records, did not indicate where the records are kept and did not indicate whether such records are available for review by United States Citizenship and Immigration Services (USCIS). In addition, the statements are not accompanied by pay stubs or tax records demonstrating that the applicant was actually employed during any of the years claimed. For all the reasons discussed above, the statements have little probative value as evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through the requisite period.

The AAO notes that the applicant was arrested by the [REDACTED] Police and charged with two counts of Aggravated Assault and Domestic Battery. The applicant pled guilty to a lesser charge of Simple Battery, a misdemeanor. He was sentenced to one year probation, fined \$200.00, and was ordered to attend an Intervention Program for Domestic Abuse and Violence "IPDAV." While the final conviction is a single misdemeanor, USCIS should consider this offense in any future immigration proceedings.

Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that he is eligible for the benefit sought. The various statements currently in the record which attempt to substantiate the applicant's residence and employment in the United States during the statutory period are not objective, independent evidence such that they might overcome the lack of primary evidence of his residence during the requisite period.

Therefore, based upon the foregoing, 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.