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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**

PUBLIC COPY



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DATE: **MAR 16 2012** Office: HOUSTON

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 [REDACTED]

[REDACTED] January 23, 2004, and [REDACTED] *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 terminated by the Director, Houston. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.¹

The applicant 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. The application was approved on February 12, 2007. The director terminated the applicant's temporary resident status on March 31, 2011, finding that the applicant did not submit sufficient evidence to establish that he entered the United States before January 1, 1982 and lived in the United States during the requisite period. In his notice of intent to terminate (NOIT), the director also noted that the record contains many inconsistencies.

On appeal, the applicant asserts that he has established that he entered the United States before January 1, 1982 and his unlawful residence for the requisite time period.

The status of an alien lawfully admitted for temporary residence under section 245A(a)(1) of the Act may be terminated at any time if it is determined that the alien was ineligible for temporary residence under section 245A of the Act. 8 C.F.R. § 245a.2(u)(1)(i).

Under the CSS/Newman Settlement Agreements, USCIS shall adjudicate each Form I-687 under the provisions of section 245A of the Act, regulations and administrative and judicial precedents which the Immigration and Naturalization Service (INS), now USCIS, followed in adjudicating the Forms I-687 timely filed during the Immigration Reform and Control Act of 1986 (IRCA) application period. *See* CSS/Newman Settlement Agreements.

An applicant who files for temporary resident status pursuant to the CSS/Newman Settlement Agreements 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 through the date of filing the Form I-687 during the original application period or through the date that the applicant attempted to file but was dissuaded from doing so by an agent of the INS. *See id.* and § 245A(a)(2)(A) of the Act.

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

¹ The Form I-694, Notice of Appeal of Decision Under Section 210 or 245A was filed by [REDACTED]. The record contains no Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative. All representations will be considered; however, counsel will not receive notice of these proceedings.

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). 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.* 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.

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 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.

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 [REDACTED]

[REDACTED]

The affidavits from [REDACTED] and [REDACTED] state that they knew the applicant *after* the requisite period. Therefore, these affidavits and letter have no probative value.

The written statements in the record contain many inconsistencies. The record contains two affidavits from [REDACTED]. In her affidavit dated May 14, 2011, [REDACTED] states that the applicant lived with her from 1986 to 1995. However, in her affidavit dated July 23, 2005, [REDACTED] states that the applicant lived with her from 1983 to 1993. The dates in [REDACTED] affidavits are inconsistent with each other.

In his statement dated May 12, 2011, the applicant states that he moved to [REDACTED] Texas to live with his aunt, [REDACTED] after his uncle died in 1985. The AAO notes, that in the Form I-687, the applicant stated that he lived at [REDACTED] Houston, Texas from October 1981 to January 1998. The applicant's statement and Form I-687 are inconsistent with each other and with [REDACTED] affidavits.

In her affidavit, [REDACTED] states that she remembers the applicant since 1983, when she was 4 years old, and states that the applicant lived in her parents' house for one year. [REDACTED] does not state how she remembers the applicant in 1983, when she was 4 years old or during what year the applicant lived in her parents' house.

In her affidavit, [REDACTED] states that in 1983 the applicant and his family became her next door neighbors. [REDACTED] states that they were neighbors for about 3 years. [REDACTED] statement is inconsistent with the applicant's statement dated May 12, 2011 in which he states that he lived with his uncle [REDACTED] and his aunt [REDACTED] from 1981 to 1985.

In their affidavits, [REDACTED] and [REDACTED] states that they have known the applicant since July 20, 1981 and February 10, 1980, respectively. The AAO notes that in the Form I-687, the applicant lists his first entry into the United States as October 1981. [REDACTED] and [REDACTED] affidavits are inconsistent with the applicant's Form I-687.

In his affidavit, [REDACTED] states that he has known the applicant since 1985 when the applicant started working in the same company as a carpenter. [REDACTED] affidavit is inconsistent with the applicant's Form I-687 and the applicant's statement dated May 12, 2011. In the Form I-687, the applicant lists his first employment as a maintenance man for [REDACTED] from January 1989 to January 1994. In his written statement, the applicant states that his first job was around 1990 for [REDACTED].

In his affidavit, [REDACTED] states that he first met the applicant in 1988 at [REDACTED] work. [REDACTED] states that he repaired the applicant's vehicle. The AAO notes that the applicant was 13 years old in 1988 and [REDACTED] does not explain how the applicant owned a vehicle at such a young age.

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 contain statements that the declarants have known the applicant for years and that attest to the applicant 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.

The witnesses' 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 they were a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the affidavit. 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, the witnesses' statements do not indicate that their assertions are probably true. Therefore, they have little probative value.

Although the applicant notes that he was not assisted by an attorney but by a notary, there is no remedy available for an applicant who assumes the risk of authorizing an unlicensed attorney or unaccredited representative to undertake representations on his behalf. *See* 8 C.F.R. § 292.1. The AAO only considers complaints based upon ineffective assistance against accredited representatives. *Cf. Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988)(requiring an appellant to meet certain criteria when filing an appeal based on ineffective assistance of counsel).

Beyond the decision of the director, the AAO finds that the record of proceeding contains evidence that the applicant was arrested by the Houston Sheriff's Office on January 1, 2005, and charged with *Failure to Stop and Give Information* (Agency Case No. [REDACTED]). The record of proceeding contains a disposition for this misdemeanor class B charge. The record indicates that the applicant pled guilty and was sentenced to 10 days. A single misdemeanor conviction does not disqualify the applicant for temporary resident status. *See* 8 C.F.R. § 245a.2(c)(1).

Beyond the decision of the director, the record contains evidence that the applicant attempted to enter into the United States falsely claiming to be a U.S. Citizen. The applicant was removed under an expedited removal order on December 6, 1999. The applicant may also be inadmissible due to fraud or willfully misrepresenting a material fact, seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act. *See* § 212(a)(6)(C)(i) of the Act. These grounds of inadmissibility may be waived, but no purpose would be served here where the applicant has otherwise failed to establish his eligibility for temporary resident status.

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. The director's decision terminating the applicant's temporary status is affirmed.

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