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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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DATE: **MAR 20 2012**

Office: LOS ANGELES

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.

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

The applicant, a native of [REDACTED] who claims to have lived in the United States since 1981, 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 November 18, 2005. The record reflects that on August 15, 2011, the director denied the application, 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.

On appeal, the applicant asserts that he entered the United States in 1981 and has continuously resided in the country for the requisite period. The applicant also asserts that he has submitted credible evidence in support of his application. The applicant submitted copies of statements previously submitted in the record. 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.¹

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).

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.

¹The 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 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 1,

1982 and lived in an unlawful status during the requisite period consists of a photocopy of a California Driver's License issued in the applicant's name on [REDACTED], a photocopy of a letter of employment, a photocopy of an immunization record, a photocopy of a letter from [REDACTED] in Los Angeles, California, and a photocopy of a statement from [REDACTED] in Los Angeles, California. The AAO has reviewed each document in its entirety to determine the applicant's eligibility; however, the AAO will not quote each witness statement in this decision.

The AAO notes a photocopy of the California Driver's License issued to the applicant on [REDACTED] is evidence that the applicant was residing in the United States for part or all of 1987. The other evidence in the record which the applicant has submitted in support of his claimed entry into the United States before January 1, 1981 and his continuous residence in the country for the requisite period, are suspect and not credible.

The letter of employment from [REDACTED], who identified himself as [REDACTED] claims that the applicant was employed as a general laborer from February 1984 to October 1988, and that he was earning \$5.25 per hour at the time he left the company. The letter does not comport with the regulatory requirements at 8 C.F.R. § 245a.2(d)(3)(i) because the letter did not identify the applicant's address at the time of employment, did not provide specific periods of employment, did not declare whether the information about the applicant's employment was taken from company records, where the records are kept and whether the United States Citizenship and Immigration Services (USCIS) will be able to review the records. The statement is not accompanied by any pay stubs, earnings statements, or tax records to show that the applicant was actually employed during any of the years indicated. In addition, [REDACTED] does not provide information on the applicant's whereabouts from 1981 through February 1984. As such, the letter of employment has little probative value as credible evidence of the applicant's continuous residence in the United States during the requisite period.

The statement dated May 14, 1991, from [REDACTED] who identified himself as Office Manager at [REDACTED] in Los Angeles, California, and claims that the applicant has been a patient of the clinic since March 1982 to the present and that he was last seen on [REDACTED] lacks details about the applicant. The statement did not provide the specific dates the applicant was seen at the clinic and for what purpose, and did not indicate how often the applicant was seen at the clinic over the years. The statement did not identify any address for the applicant during the period he was allegedly associated with the clinic. The statement is not supplemented by any medical records confirming the applicant's visits to the clinic and the names of the physicians that took care of him. In addition, [REDACTED] did not indicate the source of his information about the applicant. For all the reasons discussed above, the AAO finds that the medical statement has little probative value. It is not persuasive evidence of the applicant's continuous residence in the United States during the requisite period.

The photocopy of the summary of immunizations administered to the applicant which he submitted as evidence of his residence in the United States from 1981 through 1984, is suspect. The summary was compiled by [REDACTED] on its immunization record with an effective date of January 1988. The record indicates that most of the immunizations were given to the applicant at the [REDACTED] (no address provided). The original records from these two centers are not in the record for verification. The record also indicates that on April 30, 1984, the applicant received Polio, DTP and MMR at the [REDACTED]. Again, the original record of the immunization is not in the record for verification. Furthermore, the summary of the immunization record does not list the applicant's address at any time during the 1980s. For the reasons discussed above, the summary of the immunization record is of little probative value as evidence of the applicant's residence in the United States from 1981 through 1984, much less for the requisite period.

The statement from [REDACTED] in Los Angeles, California, indicates that the applicant was enrolled in [REDACTED] when he was in the seventh and eighth grades. The original statement from the school is not available for verification. The statement is not accompanied by school records, such as attendance records, grades or transcripts, to show that the applicant attended classes during the period indicated. For all the reasons discussed above, the statement from [REDACTED] has limited probative value as evidence of the applicant's residence in the United States from September 1981 through January 1984, much less for the duration of the requisite period.

Upon a *de novo* review of all of the evidence in the record, the AAO finds that the applicant has failed to submit credible evidence to establish that he continuously resided in the United States in an unlawful status for the requisite period. Accordingly, he 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 in the United States during the statutory period are not credible and thus are not probative.

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.