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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**

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DATE: **MAR 20 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:

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 initially approved on December 4, 2006. The applicant's temporary resident status was subsequently terminated by the Director, Houston on March 31, 2011. The termination decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record indicates that the applicant filed a Form I-687 Application for Temporary Resident Status on June 3, 2005. On March 31, 2011, the director terminated the applicant's temporary resident status noting that the applicant failed to establish that he first entered the United States before January 1, 1982 and resided continuously in the United States during the requisite period.

On appeal, through counsel, the applicant states that the evidence in the record is sufficient to establish that the applicant entered the United States before January 1, 1982 and resided continuously in the United States during the requisite 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).

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

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). 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 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.

In support of his claim of continuous residence, the applicant submitted affidavits, declarations, an employer letter, original postmarked stamped envelopes, and contemporaneous evidence.

On September 17, 2010, the director issued a notice of intent to terminate (NOIT). In the NOIT, the director stated that “while there is tangible credible evidence to support [the applicant’s] presence in the United States at other statutorily relevant times, there is no tangible or credible evidence to support [the applicant’s] presence in the United States during the time period from April 1987 to July 1988.”

The AAO notes that the record contains sufficient credible evidence to establish the applicant’s continuous residence throughout the requisite period. In the termination, the director concluded that affidavits from [REDACTED] were inconsistent. The director found the affiants’ claim that the applicant resided at [REDACTED] beginning in April 1986 was

inconsistent with the applicant's testimony in the Form I-687. The AAO will withdraw this portion of the director's decision. The Form I-687 indicates that the applicant resided at [REDACTED] beginning in April 1986.

The director found that the applicant's absences and dates of his children's births were inconsistent. The director indicated that the applicant's testimony regarding his own and his wife's travel between the United States and [REDACTED] was insufficient to explain his children's conceptions. The AAO finds that the applicant's testimony is credible, and he did not meaningfully interrupt his continuous residence. Thirty years have lapsed since the beginning of the requisite period, hence it is unreasonable to expect total accurate recall of events long past.

The contemporaneous documents submitted by the applicant appear to be credible. The declarations and other documentation submitted by the applicant appear to be credible and amenable to verification in that each include contact telephone numbers and/or contact addresses. Upon review of the totality of the record, the AAO finds that the record contains sufficient relevant probative, and credible evidence that leads the AAO to believe that the claim is "probably true" or "more likely than not." Thus the applicant has satisfied his 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).

The information on the supporting documents in the record is consistent with the applicant's testimony and with the claims made on his I-687 Application; there are no significant inconsistencies. As stated in *Matter of E-M-*, 20 I&N Dec. at 80, when something is to be established by a preponderance of the evidence, the proof submitted by the applicant has to establish only that the asserted claim is probably true. That decision also states that, under the preponderance of evidence standard, an application may be granted even though some doubt remains regarding the evidence. *Id.* at 79. The documents that have been furnished in this case may be accorded substantial evidentiary weight and are sufficient to meet the applicant's burden of proof of residence in the United States for the requisite period.

The applicant has established by a preponderance of the evidence that he entered the United States before January 1, 1982 and maintained continuous, unlawful residence for the duration of the requisite period.

The appeal will be sustained. The director shall reopen the applicant's Form I-698, Application to Adjust Status from Temporary to Permanent Resident.

ORDER: The appeal is sustained.