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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



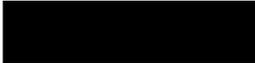
U.S. Citizenship  
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Services

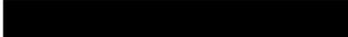
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DATE: **MAR 20 2012** Office: TEXAS SERVICE CENTER

FILE: 

IN RE: Applicant: 

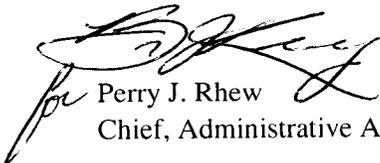
APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

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.

  
Perry J. Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The application for temporary resident status under section 245A of the Immigration and Nationality Act (Act) was denied by the director, Texas Service Center, Mesquite, Texas. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a native of Mexico who claims to have lived in the United States since March 1981, submitted a Form I-687, Application for Status as a Temporary Resident under Section 245A of the Act on May 5, 1988. The record reflects that on September 22, 2010, 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, counsel asserts that the director failed to give proper weight to the affidavits the applicant submitted in support of his application. Counsel contends that the applicant has submitted sufficient credible evidence to establish eligibility for the benefit sought. 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.<sup>1</sup>

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.

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).

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<sup>1</sup>The 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).

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 had lived continuously in an unlawful status during the requisite period consists of statements and affidavits from employers, friends and acquaintances, as well as copies of W-2 Wage and Tax Statements and earnings statements. 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 record indicates that on August 15, 1987, the applicant was arrested by the Dallas, Texas, Sheriff's Office and charged with one count of assault. The AAO accepts this arrest record as credible evidence that the applicant was residing in the United States for all or part of 1987. The other evidence submitted by the applicant in support of his claimed entry into the United States before January 1, 1982 and his continuous residence in the country for the requisite period are found not to be credible and probative.

The record contains an affidavit from [REDACTED], who identified herself as the owner of [REDACTED] Dallas, Texas. [REDACTED] claims that the applicant was employed from May 31, 1985 until September 18, 1987. She further states that official records of employment were not maintained and thereby none are available for verification.

The affidavit of employment from [REDACTED] dated March 30, 1988, does not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because the affidavit does not indicate the applicant's address during the period of employment, does not provide a description of the applicant's duties and responsibilities, and does not indicate whether the information about the applicant's employment was obtained from company records or personal knowledge. [REDACTED] states that no official employment records were maintained, but does not provide any reason why the applicant's employment record is unavailable.

The AAO notes that contrary to [REDACTED] assertion that no employment record was maintained and none is available, the record contains copies of W-2 Wage and Tax Statements from [REDACTED] for the years 1985 and 1987 as well as Earnings Statements from [REDACTED] for the weeks ending April 8, May 6, and July 22, 1988, all in the applicant's name. The AAO also notes that the 1985 W-2 Form does not list the applicant's address and the 1987 Form contains an address that is contrary to the address listed by the applicant on the Form I-687 for the same period. The 1987 W-2 listed the applicant's address as [REDACTED] Dallas, Texas. However, on the Form I-687, the applicant listed his address for the same period as [REDACTED] Dallas, Texas. The earnings statements from [REDACTED] for April to July 1988 are inconsistent with the affidavit of employment that listed the applicant's period of employment with the company as from May 31, 1985 through September 18, 1987. The record also contains earnings statements from [REDACTED] for October and November 1986 and from [REDACTED] for January 1988. The applicant does not list these two companies as any of his employers during the 1980s.

The inconsistencies discussed above, call into serious question the credibility of the evidence submitted by the applicant in support of his claim of continuous residence in the United States during the requisite period. As a result, the AAO finds the employment documents to have little probative value as evidence of the applicant's residence in the United States during the requisite period.

As for the statements and affidavits in the record from individuals who claim to have employed, lived with or otherwise known the applicant during the 1980s, they have minimalist or fill-in-the-blank formats with very little input by the affiants. Considering the length of time they claim to have known the applicant – in all cases since 1981 - the authors 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 and affidavits are not accompanied by any documentary evidence – such as photographs, letters, and the like – demonstrating the authors' personal relationships with the applicant in the United States during the 1980s. Although some of the authors provided documentation to establish their identities, none provided any documentation to establish their residence in the United States during the requisite period.

In an affidavit dated August 1, 1988, [REDACTED] who claims to be the applicant's brother, states "I know it to be a fact that [the applicant], my brother has lived continuously in the United States since March 1981." [REDACTED] states that when the applicant came to the United States in March 1981, that the applicant lived with him for some time at his address on [REDACTED] Dallas, Texas, and with his sister at [REDACTED] Dallas, Texas, for some other time. Contrary to [REDACTED] assertion, the applicant did not list [REDACTED] Dallas, Texas, as one of his addresses in the United States during the 1980s. [REDACTED] does not state with any detail how he acquired his knowledge that the applicant entered the United States in March 1981, or how frequently and under what circumstances he interacted with the applicant during the requisite period. The affidavit is completely devoid of any details that would lend credibility to his claimed relationship with the applicant and provides no basis for concluding that he actually has a direct and personal knowledge of the events and circumstances of the applicant's residence in the United States during the requisite period.

For all the reasons discussed above, the AAO finds that the statements and affidavits in the record have little probative value. They are not persuasive evidence of the applicant's continuous residence in the United States during the requisite period.

The AAO finds that the applicant has failed to provide probative and credible evidence of his continuous residence in the United States from before January 1, 1982 through at least 1987. The inconsistencies discussed above are material to the applicant's claim in that they have a direct bearing on the applicant's residence and employment in the United States during the requisite period. No evidence of record resolves these inconsistencies. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent 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. *Matter of Ho*, 19 I & N Dec. 582, 591-592 (BIA).

While the record contains credible evidence of the applicant's presence and residence in the United States in 1987, the statements and the affidavits submitted by the applicant to establish his continuous residence from before January 1982 through at least 1987, are not credible and

probative and cannot serve as persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through 1987.

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 in the United States during the statutory period are not objective, independent evidence such that they might overcome the inconsistencies in the record regarding the applicant's claim that he maintained continuous residence in the United States throughout the statutory period, 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.