

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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



LI

DATE: **MAY 08 2012** Office: LOS ANGELES, CA

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 cursive script, 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 Mexico who claims to have lived in the United States since 1977, 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 16, 2005. On June 28, 2007, the director denied the application for class membership. The applicant timely filed an appeal to the Special Master. On February 8, 2011, the Special Master granted his appeal and remanded the case to the director in Los Angeles to decide the case on its merit. The record reflects that on January 17, 2012, 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 has submitted evidence to establish his continuous residence in the United States from 1981 through the requisite period. The applicant submitted additional statements from witnesses attesting to his residence in the United States from before January 1, 1982 through May 4, 1988. 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.

¹ 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).

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 1, 1982 and lived in an unlawful status through the requisite period consists primarily of witness statements attesting to his residence and employment in the United States during the requisite period. 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. 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 applicant indicated that he first entered the United States in 1977, that he continuously resided in the country until 1987, when he traveled to Mexico to visit his family from July 5 to July 25, 1987. The record does not contain contemporary documentation from the 1980s that shows the applicant to have resided continuously in the United States during the requisite period for legalization. For someone claiming to have lived in the United States since 1977, it is noteworthy that the applicant is unable to produce a solitary piece of primary evidence, such as hospital or medical records, lease agreements or rental receipts bearing the addresses he claims during the following seven years through May 4, 1988.

The record includes a May 25, 2005 letter from [REDACTED] who identified himself as the president of [REDACTED] located in Anaheim, California. [REDACTED] states that the applicant was employed from December 1981 through December 1988 as a worker at [REDACTED]

The letter does not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because it does not provide the applicant's address during the period of employment, does not provide a description of the applicant's duties and responsibilities, does not indicate whether the information about his employment was taken from company records, and does not indicate whether such records are available for review. The letter is not supplemented by earnings statements, pay stubs, or tax records demonstrating that the applicant was actually employed during any of the years indicated on the letter. Accordingly, the letter has little probative value and is not persuasive evidence of the applicant's residence in the United States from before January 1, 1982 through May 4, 1988.

The witness statements in the record from individuals who claim to have lived with or otherwise known the applicant resided in the United States during the requisite period consists of minimalist or fill-in-the-blank formats with very little input from the witnesses. Considering the length of time they claim to have known the applicant – in most cases before 1980 – the witnesses provided remarkably few details about the applicant's life in the United States and the extent of their interaction with him over the years. The statements are not accompanied by any documentary evidence from the witnesses – such as photographs, letters, and the like – demonstrating their personal relationship with the applicant in the United States over the years.

██████████ who identified himself as the applicant's cousin, claims that he knows that the applicant has been residing in the United States since 1979 because they met each other on a regular basis to talk about their family and work. Despite his claimed close relationship with the applicant over a very long period of time, ██████████ did not provide any information where the applicant lived or worked. He did not provide any documentation demonstrating his relationship with the applicant other than his vague statement. ██████████ claims that he first met the applicant in 1986 when the applicant was working in the ██████████. He also claims that he has been good friends with the applicant since 1980, that they visit and/or talk to each other on the phone, and that they sometimes go out together. This statement is inconsistent with the information provided by the applicant on the Form I-687. The applicant indicated on the Form I-687 that his employer at that time was ██████████ California and not an employer ██████████. In addition, the statement is internally inconsistent because ██████████ claims that he first met the applicant in 1986 and therefore he could not have been friends with the applicant in 1980, eight years before he first met the applicant.

While the witnesses provided documentation to establish their identities, none provided documentation to establish their residence in the United States during the 1980s. In view of the substantive deficiencies and inconsistencies noted above, the AAO finds the witness statements have little probative value as evidence of the applicant's continuous residence in the United States during 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 and employment in the United States during the requisite period are not credible and thus are not probative.

Accordingly, 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.