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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: Office: LOS ANGELES, CA
MAY 10 2012

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 Mexico 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 January 6, 2006. On February 14, 2007, the director denied the application for class membership. The applicant timely filed an appeal to the Special Master. On June 13, 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 July 18, 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 has submitted sufficient evidence to establish his continuous residence in the United States from 1981 through the requisite period.¹ 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.²

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).

¹ The record reflects that the applicant initially filed a Form I-694, Notice of Appeal of Decision under Section 210 or 245A, which, the director rejected as untimely on October 4, 2011. The applicant filed a Motion to Reopen, providing evidence that demonstrates that the appeal was timely. The director reopened the matter and determined that the rejection notice was issued in error because the denial notice instructed the applicant to submit the wrong fee causing the timely appeal to be rejected. The director withdrew the October 4, 2011, decision and accepted the Form I-694 as timely.

² 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).

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).

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 of affidavits from witnesses, photocopies of W-2 Wage and Tax Statements, and a photocopy of an Immunization Record. 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 record reflects that the applicant has provided conflicting statements and documentation in support of his application. The record reflects that on the Form I-687 the applicant completed on December 16, 1991, he indicated his residence during the requisite period as: [REDACTED] California, from October 1981 to February 1985; and [REDACTED] Santa Ana, California, from March 1985 to October 1989. He listed his employers in the United States since entry as: [REDACTED] March 1983 to March 1985; and [REDACTED] September 1988 to February 1991. The applicant did not list any employer between April 1985 and August 1988. The applicant indicated that he was absent from the United States once during the requisite period – a trip to Mexico from May 15 to June 4, 1987.

On the current Form I-687, the applicant indicated his residence in the United States since entry as [REDACTED] Santa Ana, California, from August 1981 to June 1990. He listed his employer in the United States as [REDACTED], from August 1986 to June 1989. The applicant did not list any employer from 1981 to July 1986. The applicant indicated that he was absent from the United States on two separate occasions, from July to August 1986, and from December 1987 to January 1988.

The inconsistencies regarding the applicant's residence, employment, and trips outside the United States during the requisite period call into question the veracity of his claim that he has been continuously residing in the United States for the requisite period.

In support of his claimed employment in the United States during the requisite period, the applicant submitted photocopies of W-2 Wage and Tax Statements from [REDACTED] for the years 1985 through 1988. The W-2s are inconsistent with the employment information provided by the applicant on the 1991 Form I-687. On that form, the applicant stated that he was employed by [REDACTED] from September 1988. The W-2s are also inconsistent with the information the applicant provided on the current Form

I-687. The applicant stated on the current Form I-687 that he was employed by [REDACTED] from August 1986.

The photocopied Immunization Record in the file appears to be suspect. The record contains entries for Polio and Varicella vaccines that were given to the applicant on February 15, 1981 by [REDACTED]. This entry is inconsistent with the applicant's claimed entry date of October 15, 1981. It is implausible that the applicant would have been given vaccines in the United States, eight months before his claimed entry into the United States. As a result, the photocopied immunization record is not credible evidence of the applicant's residence in the United States during the requisite period.

The affidavits from witnesses who claim to have lived with or otherwise known the applicant in the United States during the requisite period consists of minimalist or fill-in-the-blank formats with very little input from the affiants. Considering the length of time they claim to have known the applicant – in all cases since 1981 – the affiants provided very few details about the applicant's life in the United States and the extent of their interaction with him over the years. The affidavits are not accompanied by documentary evidence – such as photographs, letters, and the like – demonstrating the affiants' personal relationship with the applicant in the United States over the years. While the affiants claim they have personal knowledge that the applicant resided in [REDACTED] California from 1981, they did not provide the full and complete address of the applicant's residence in [REDACTED], and did not state how and when they met the applicant. In view of the substantive deficiencies, the AAO finds that the affidavits have little probative value as evidence of the applicant's residence in the United States during the requisite period.

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).

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 requisite 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.