

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



41

DATE: **OCT 10 2012** OFFICE: LOS ANGELES

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: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the National Benefits Center. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

Thank you,



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

On November 30, 2005, the applicant filed an application for status as a temporary resident (Form I-687). On January 24, 2012, the field office director of the Los Angeles office denied the I-687 application, finding that the applicant had failed to submit sufficient evidence to establish his continuous unlawful residence and physical presence in the United States during the requisite period. The director's decision will be withdrawn, and the AAO will consider the claim *de novo*, evaluating the sufficiency of the evidence in the record, according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.2(d)(6).¹

On the Form I-290B Notice of Appeal, dated February 17, 2012, the applicant requested 120 days from the date of his appeal to submit evidence, but the record did not reflect receipt of additional evidence.

On May 24, 2012, the AAO notified the applicant of the intent to deny the application (NOID) based on deficiencies in the record. The applicant was granted 21 days to respond. The applicant responded to the NOID and provided additional declarations.

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.

¹ 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).

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).

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. 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).

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he continuously resided in the United States in an unlawful status from before January 1, 1982 through the date he attempted to file a Form I-687 during the original one-year application period that ended on May 4, 1988. After reviewing the entire record, the AAO determines that he has not met his burden.

At the time of completing the Form I-687 application, dated August 16, 2005, the applicant indicated that he had resided in the United States since 1981. The applicant has submitted as proof of his asserted date of entry into the United States and continuous residence in the United States during the requisite period, a letter of employment and several witness statements attesting to his residence.

Affidavits & Declarations:-

- 1) Four declarations from [REDACTED] one dated June 4, 2012, and three dated June 5, 2012. In her first affidavit [REDACTED] attests that on July 31, 1987 the applicant visited her home and told her that he was going to apply for asylum at an immigration office that morning. In her second affidavit [REDACTED] attests that on July 2, 1987, she took the applicant to Tijuana, Mexico, to visit his children whom he had not seen for a while. [REDACTED] also attests that she and the applicant are friends, and that the applicant informed her that he would remain in Mexico for only one month. In the third affidavit, [REDACTED] attests that on July 30, 1987 she went to San Isidro to pick up the applicant after his visit to Mexico. In her fourth affidavit [REDACTED] attests that she first met the applicant in May 1987, and states that they have been friends since they first became acquainted.

- 2) A declaration from [REDACTED] attesting that she first met the applicant when she visited Los Angeles for a friend's celebration on July 2, 1987. [REDACTED] also attests that since she and the applicant became friends, they have maintained contact, mainly by telephone.
- 3) Declarations from [REDACTED] attesting that he first met the applicant at a family party in 1981 and that they became friends. He further states that he and the applicant often played soccer at [REDACTED]
- 4) A declaration from [REDACTED] attesting that he first met the applicant in 1983 when the applicant asked him if he knew anyone who could offer him work; that he did repairs for him; that they became friends; and that the applicant has since continued to do repairs for him since they met.
- 5) A declaration from [REDACTED] attesting that he first met the applicant in 1984 at a soccer match, and that they became friends. [REDACTED] also attests that he and the applicant have kept in touch over the phone and that the applicant changed his car oil for him.
- 6) A declaration from [REDACTED] attesting that he first met the applicant in 1987 when the applicant asked him if he knew of any jobs; that the applicant told him that he could paint and do gardening; and, because the declarant also needed work, he and the applicant agreed to look for work together.
- 7) Additional witness statements from [REDACTED]

Although the witnesses claim to have personal knowledge of the applicant's residence in the United States for all or part of the requisite period, the witness statements do not provide concrete information, specific to the applicant and generated by the asserted associations with him, which would reflect and corroborate the extent of those associations, and demonstrate that they were a sufficient basis for reliable knowledge about the applicant's residence in the United States during the requisite period. To be considered probative and credible, witness statements must do more than simply state that a witness knows an applicant and that the applicant has lived in the United States for a specific period. Their content must include sufficient detail from a claimed relationship to indicate that it probably did exist and that the witness, by virtue of that relationship, does have knowledge of the facts alleged. For instance, the witnesses do not state how they date their initial meeting with the applicant in the United States, or specify social gatherings, other special occasions or social events when they saw and communicated with the applicant during the requisite period. The witnesses also do not state how frequently they had contact with the applicant during the requisite period. The witnesses do not provide sufficient

details that would lend credence to their claimed knowledge of the applicant's residence in the United States during the requisite period. The affidavits will be given only nominal weight.

Letters of Employment

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

The record includes several letters of employment, from [REDACTED] Inc., stating that he first met the applicant at work in 1987. In a supplemental letter, [REDACTED] states that in 1987 the applicant worked for his company on a part-time basis and that at the same time, the applicant worked full-time at the Hana company.

It is noted, however, that [REDACTED] does not provide details, such as the exact dates of employment with [REDACTED]. In addition, the letter of employment failed to provide the applicant's address at the time of employment, show periods of layoff, declare whether the information was taken from company records, and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable as required under 8 C.F.R. § 245a.2(d)(3)(i).

Although the letter from [REDACTED] states that the applicant was employed at the company beginning in 1987, the applicant failed to indicate he worked there on his Form I-687. The applicant indicated that from 1981 to 1990 he was a self-employed yardman. These discrepancies cast doubts on whether the employment letter from [REDACTED] is genuine. As stated above, 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, supra*. The letters will be given no weight.

As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the applicant's reliance upon documents with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982, through May 4, 1988.

Based on the foregoing analysis of the evidence, the AAO concludes that the applicant has failed to establish his continuous unlawful residence in the United States throughout the requisite

period. Thus, the record does not establish that the applicant entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from that date through the date he attempted to file a Form I-687 during the original one-year application period that ended on May 4, 1988. Accordingly, the applicant is ineligible for temporary resident status under section 245A(a)(2) the Act.

ORDER: *The appeal is dismissed. This decision constitutes a final notice of ineligibility.*