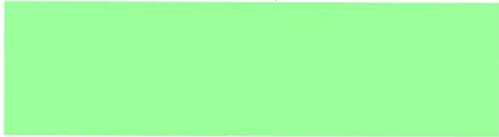


(b)(6)

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



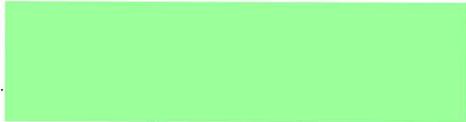
Date: **JAN 11 2013** Office: HOUSTON

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.

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The director of the Houston office terminated the temporary resident status of the applicant. The matter is now before the Administrative Appeals Office (AAO) on a motion to reopen. The AAO will reject the motion.

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 approved on March 23, 2007.¹ On April 10, 2012, the director of the Houston office terminated the temporary resident status of the applicant, finding the applicant to be ineligible for temporary resident status based on both a lack of documentation and inconsistent documentation in the record of proceedings.

On May 8, 2012, the applicant, through counsel, appealed the director's decision to the AAO. In the Form I-694, notice of appeal, counsel did not state the basis for the appeal. With the Form I-694, counsel submitted an additional affidavit from the applicant attested to on June 13, 2012, asserting that the evidence which he previously submitted establishes by a preponderance of the evidence that he continuously resided in the United States in an unlawful status for the duration of the requisite period, and that any inconsistencies in the record are the result of errors of memory due to the passage of time. We found that the applicant's affidavit does not offer an explanation for inconsistencies in his testimony set forth by the director. Other than his affidavit, the applicant did not submit any further evidence on appeal. Counsel stated that he would submit a brief within 30 days. Although a June 13, 2012 transmittal letter from counsel's office claimed to enclose an appeal brief, the record does not contain a brief. Therefore, the AAO summarily dismissed the appeal on October 10, 2012.²

On November 2, 2012, the applicant, through counsel, filed a motion to reopen the matter *sua sponte*, asserting that the AAO erred in failing to review a brief submitted with the appeal. However, a review of the documents re-submitted with the motion reveals that the "brief" referred to by counsel is the applicant's June 13, 2012 affidavit previously submitted with the appeal and considered in our October 10, 2012 decision.

The AAO may *sua sponte* reopen any proceeding conducted by the AAO under 8 C.F.R. § 245a and reconsider any decision rendered in such proceeding. 8 C.F.R. § 103.5(b). However, counsel has not submitted with the motion a brief or any further evidence to overcome the

¹The record reflects the applicant's FOIA request, [REDACTED] was processed on October 12, 1993.

²In our decision, we failed to address an error on the part of the director: in the Notice of Intent to Terminate (NOIT) the applicant's temporary residence the director impermissibly referred to a Form I-700, application for temporary resident status as a special agricultural worker, filed by the applicant in 1988 and subsequently withdrawn. The director's reference in the NOIT to the Form I-700 is hereby withdrawn. We find that the director's error is harmless, because a review of the director's decision reveals that he conducted a *de novo* review of the evidence of record as it pertains to the requisite continuous residence, and based his decision solely on that record. The director's decision did not reference the I-700 application or statements or documents submitted solely in support of that application, or information revealed by the adjudication of that application.

insufficiency of and inconsistencies in the submitted evidence cited by the director as the bases for termination, as more fully discussed below.

The temporary resident status of an alien may be terminated upon the determination that the alien was ineligible for temporary residence. Section 245A(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1255a(b)(2)(A), and 8 C.F.R. § 245a.2(u)(i).

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 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. 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 documentation that the applicant submitted in support of his claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists of witness statements and photographs.

The record contains witness statements from [REDACTED]

[REDACTED] The statements are general in nature, and state that the witnesses have knowledge of the applicant's residence in the United States for all, or a portion of, the requisite statutory period.

Although the witnesses claim to have personal knowledge of the applicant's residence in the United States during 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.

[REDACTED] states he has known the applicant since 1984 in [REDACTED] Texas, at which time he states the applicant was working for [REDACTED]

[REDACTED] states she has known the applicant since meeting him in 1982 in [REDACTED]

Texas. [REDACTED] all state they have known the applicant since the summer of 1981. [REDACTED]

have submitted statements using almost identical language, stating they have known the applicant since 1982 while he was residing in [REDACTED] Texas with [REDACTED]

[REDACTED] states she has known the applicant since 1983 "while he was residing at [REDACTED] in [REDACTED] Texas [REDACTED]"

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. The witnesses do not state how they date their initial meeting with the applicant in

the United States. In addition, the witnesses do not state a particular location where the applicant resided during the requisite period. Further, the witnesses do not specify social gatherings, other special occasions or social events when they saw and communicated with the applicant during the requisite period, or state how frequently they had contact with the applicant during the requisite period. The AAO agrees with the director's finding that 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.

In addition, some of the witness statements contain information that is inconsistent with other statements in the record. For example, [REDACTED] states he has known the applicant since 1982 in [REDACTED] Texas, at which time he states the applicant was working for [REDACTED]. [REDACTED] states he has known the applicant since 1981 in [REDACTED] Texas at which time he states both he and the applicant were working for [REDACTED]. However, the statements of witnesses [REDACTED] are inconsistent with an employment verification letter submitted by the applicant's employer, [REDACTED] stating the applicant began working for [REDACTED] in March 1983.³ [REDACTED] witness statement is internally inconsistent, stating that he has known the applicant since 1981 and since 1972.

The record contains two employment verifications letter from [REDACTED] dated February 17, 2012 and March 6, 1990, respectively. In the 2012 letter, the witness states the applicant was employed by [REDACTED] from March 1983 through the end of the requisite period, performing "many different types of jobs." In the 1990 letter, the witness states the applicant was employed by [REDACTED] from 1981 through the end of the requisite period, and that the applicant "has been involved in the cattle operation, farming of hay and maintenance of pecan trees and harvesting." However, at the time of filing the instant I-687 application, the applicant did not list any employment in the United States prior to March 1983. Further, in a Form G-325A signed by the applicant on November 15, 2001, and filed contemporaneously with a Form I-485, application to adjust to permanent resident status under the Legal Immigration Family Equity (LIFE) Act, the applicant indicated he worked for [REDACTED] from June 1980 through the end of the requisite statutory period. In the initial I-687 application, signed by the applicant on March 31, 1990 and filed to establish his CSS class membership, the applicant indicated he worked for [REDACTED] from June 1981 through the end of the requisite period. Therefore, there are inconsistencies in the record regarding the dates of the applicant's employment in the United States during the requisite period.

In addition, the employment verification letters of [REDACTED] do not meet the requirements set forth in the regulations, which provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment. The regulation at 8 C.F.R. § 245a.2(d)(3)(i) provides that letters from employers must include: (A) Alien's address at the time of employment; (B) Exact period of employment; (C) Periods of layoff; (D) Duties with the company; (E) Whether or not the information was taken from official company records; and (F)

³ The witness statements of [REDACTED] use almost identical language.

Where records are located and whether the Service may have access to the records. If the records are unavailable, an affidavit-form letter stating that the alien's employment records are unavailable and why such records are unavailable may be accepted in lieu of subsections (E) and (F). The witness's employment verification letters fail to comply with the above cited regulation because they lack considerable detail regarding the applicant's employment. For instance, the witness does not state the applicant's daily duties, the number of hours or days he was employed, or the applicant's address at the time of employment. The witness also does not detail what portion of the applicant's employment was spent working for [REDACTED] versus [REDACTED] from March 1983 through the end of the requisite period, when the applicant is stated as being employed by both companies. Furthermore, the witness does not state how he was able to date the applicant's employment. It is unclear whether he referred to his own recollection or any records he may have maintained. Therefore, the letters fail to provide sufficient detail to verify the applicant's claim of continuous residence in the United States for the duration of the requisite statutory period.

The applicant submitted copies of two photographs in which he has identified himself. One of the photographs is dated 1981 and the other is undated. However, since the locations depicted in the photographs cannot be determined the photographs cannot constitute evidence in support of the applicant's continuous residence in the United States throughout the requisite period.

The remaining evidence in the record is comprised of copies of the applicant's statements, the instant I-687 application, a Form I-485, application to adjust to permanent resident status under the Legal Immigration Family Equity (LIFE) Act filed by the applicant in 2002, and the initial I-687 application, signed by the applicant on March 31, 1990 and filed to establish his CSS class membership. There are inconsistencies in the applicant's testimony regarding the date of his initial entry into the United States and the dates of his absences from the United States during the requisite period.

At the time of filing the instant I-687 application, the applicant listed a residence on [REDACTED] in [REDACTED] Texas from 1986 through the end of the requisite period. He listed employment with [REDACTED] in [REDACTED] Texas from March 1983 through the end of the requisite period. The applicant did not list any absences from the United States during the requisite period.

At the time of his interview on March 22, 2007, the applicant amended the I-687 application to indicate that he had additional residences in the United States from 1980 to 1984 at "[REDACTED] [REDACTED] in [REDACTED] Texas, and from 1984 to 1986 "with Boss [REDACTED] on [REDACTED] in [REDACTED] Texas. However, [REDACTED] employer verification letters do not state that the applicant lived with [REDACTED] or on his work premises. Also at the time of his interview, the applicant amended the I-687 application to indicate a three-week absence from the United States in 1986 to visit family in Mexico. Further, the applicant amended the I-687 application to indicate additional employment in the United States from 1980 to 1983 as a day laborer, both with [REDACTED] and with [REDACTED]

In a Form G-325A, biographic information sheet, signed by the applicant on November 15, 2001, the applicant indicated he worked for [REDACTED] from June 1980 through the end of the requisite statutory period.

In the initial I-687 application, signed by the applicant on March 31, 1990, the applicant indicated at number 16 that he first entered the United States on June 15, 1981. He listed a residence in [REDACTED] Texas from June 1981 through the end of the requisite period. He listed employment with [REDACTED] in [REDACTED] Texas from June 1981 through the end of the requisite period. The applicant listed two absences from the United States during the requisite period, from May to June 1985 and from June to July 1987, respectively, to visit family in Mexico.

In a statement signed by the applicant in March 1992, the applicant stated that he first entered the United States "in the 1970's." He stated that "since 1970 I have gone to Mexico and reentered the U. S. to continue working. I went each year since 1970 to Mexico and stayed 2 or 3 months, from November to March of each year, and then reentered the U.S. illegally . . ." ⁴

The director of the Houston office set forth the lack of documentation and some of the above inconsistencies in the record of proceedings, in a notice of intent to terminate (NOIT) the applicant's temporary residence. The applicant responded to the NOIT, submitting witness statements and photographs which have been described above, but the applicant did not provide a reasonable explanation for the inconsistencies in the record cited by the director, regarding the date of his initial entry into the United States and the dates of his absences from the United States during the requisite period.

The AAO agrees with the director that the applicant has failed to provide probative and credible evidence of his continuous residence in the United States for the duration of the requisite period. The inconsistencies in the record regarding the dates when the applicant first entered the United States, resided and worked at particular locations in the United States, and the dates when the applicant was absent from the United States during the requisite period are material to the applicant's claim in that they have a direct bearing on the applicant's residence 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). These contradictions undermine the credibility of the applicant's claim of entry into the United States prior to January 1, 1982 and continuous residence in the United States during the requisite period. In addition, the various statements currently in the record which attempt to substantiate the applicant's residence and employment in the United States during the statutory period are not objective,

⁴ According to this version of the applicant's testimony, he was outside the United States multiple times during the requisite statutory period, each absence being in excess of 45 days, and is thus ineligible for the benefit. An applicant may not have been absent for more than 45 days in a single period in order to maintain his continuous residence, unless he establishes that his prolonged absence was due to an emergent reason. 8 C.F.R. § 245a.2(h).

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.

The AAO agrees with the director that 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. The applicant has failed to overcome the basis for the termination of his temporary resident status.

Based upon the foregoing, the AAO finds that the record in this case does not warrant a reopening *sua sponte*.

Accordingly, counsel's motion to reopen the matter *sua sponte* will be rejected and the previous decision of the AAO will not be disturbed.

ORDER: The motion to reopen is rejected. This decision constitutes a final notice of ineligibility.