



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF A-M-M-

DATE: SEPT. 12, 2016

APPEAL OF KANSAS CITY, MISSOURI FIELD OFFICE DECISION

APPLICATION: FORM I-687, APPLICATION FOR STATUS AS A TEMPORARY RESIDENT
UNDER SECTION 245A OF THE IMMIGRATION AND NATIONALITY
ACT

The Applicant, a native and citizen of Mexico, seeks status as a temporary resident. See Immigration and Nationality Act (the Act) section 245A, 8 U.S.C. § 1255a and the settlement agreements 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). The Immigration Reform and Control Act of 1986 created a legalization program under section 245A of the Act, which allows eligible foreign nationals who entered the United States before January 1, 1982, and who continuously resided and were physically present in the United States during specified time periods, to adjust status to temporary residence, if they are admissible to the United States and have not been convicted of a felony or three or more misdemeanors in the United States. The application period for temporary resident status ended on May 4, 1988. However, under the terms of the CSS/Newman Settlement Agreements, eligible individuals who did not apply for legalization during the initial application period for certain specific reasons may also adjust status to temporary residence.

The Field Office Director, Kansas City, Missouri, denied the application. The Director concluded that the Applicant did not establish that he had been present in the United States before January 1, 1982. The Director also determined that the Applicant was inadmissible under section 212(a)(6)(C)(i) of the Act "due to misrepresentations [he] made during [his] March 22, 2007 interview."¹

The matter is now before us on appeal. In the appeal, the Applicant submits additional evidence and claims that the Director erred by applying a higher burden of proof than required and by not considering the Applicant's age when he came to the United States.

¹ While the Director acknowledged that the Applicant applied for a waiver of this inadmissibility, the Director did not specify if or how the waiver was adjudicated. The Form I-690, Application for Waiver of Grounds of Inadmissibility, in the record does not indicate that a decision on the waiver application was made.

Upon *de novo* review, we will dismiss the appeal.

I. FACTS AND PROCEDURAL HISTORY

In 2007, the Director denied the Form I-687 application. In 2009, we dismissed a subsequent appeal. In 2012, the Director reopened the Form I-687 on Service motion after the Special Master² determined that the Applicant was a CSS class member.³ In 2015, the Director denied the Form I-687, finding that the evidence the Applicant submitted was insufficient to establish that he entered and has resided in the United States in an unlawful status during the statutory period.

II. LAW

The Applicant is seeking to adjust status to that of a temporary resident. Section 245A of the Act provides:

(a) Temporary Resident Status.-The [Secretary of Homeland Security] shall adjust the status of an alien to that of an alien lawfully admitted for temporary residence if the alien meets the following requirements:

.....

(2) Continuous unlawful residence since 1982.-

(A) In general.-The alien must establish that he entered the United States before January 1, 1982, and that he has resided continuously in the United States in an unlawful status since such date and through the date the application is filed under this subsection.

.....

(3) Continuous physical presence since enactment.-

(A) In general.-The alien must establish that the alien has been continuously physically present in the United States since the date of the enactment of this section.

(B) Treatment of brief, casual, and innocent absences.- An alien shall not be considered to have failed to maintained continuous physical presence in the United States for purposes of subparagraph (A) by virtue of brief, casual, and innocent absences from the United States.

² The Special Master has jurisdiction over specific issues listed in the settlement agreements. These issues include class membership denials issues pertaining to violation of certain rights.

³ The Special Master determined that the Applicant was a class member, which the Director and we do not dispute. Therefore, we will only address whether the evidence the Applicant submitted establishes that he meets requirements for adjustment of status under section 245A.

(C) Admissions.-Nothing in this section shall be construed as authorizing an alien to apply for admission to, or to be admitted to, the United States in order to apply for adjustment of status under this subsection.

(4) Admissible as immigrant.-The alien must establish that he-

(A) is admissible to the United States as an immigrant, except as otherwise provided under subsection (d)(2)[.]

The Applicant has the burden of proving by a preponderance of credible evidence that he 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 regulations at 8 C.F.R. § 245a.2(d) provide:

(5) *Burden of proof.* An alien applying for adjustment of status under this part 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 under this section. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification as set forth in paragraph (d) of this section.

(6) *Evidence.* The sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony. In judging the probative value and credibility of the evidence submitted, greater weight will be given to the submission of original documentation.

Pursuant to 8 C.F.R. § 245a.2(d)(3), an applicant must provide proof of residence during the requisite time period, to include but not limited to, past employment records, utility bills, school records, attestations by other organizations with whom the applicant has done business, or any other relevant document.

III. ANALYSIS

The issues in these proceedings are whether the Applicant established entry into the United States before January 1, 1982, and continuous unlawful residence for the requisite period of time.

A. Continuous unlawful residence since January 1, 1982, through the date of filing

As stated above, an applicant for temporary residence 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. 8 C.F.R. § 245a.2(b)(1). 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)(1) 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 the above by a preponderance of the evidence. 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).

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’r 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.* at 80. 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.

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 has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421, 431 (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.

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). However, pursuant to 8 C.F.R. § 103.2(b)(2), when affidavits are presented to establish eligibility, they must overcome the unavailability of both primary and secondary evidence.

The Applicant has submitted the following declarations as the sole evidence to establish that he entered the United States before January 1982 and continuously resided in the United States in an unlawful status through May 4, 1988:

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- A June 2015 affidavit and a March 2006 affidavit from the Applicant's uncle, stating that he met the Applicant on February 14, 1980, at the Applicant's house. He further states that the Applicant arrived in Texas with his father in October 1981. He also states that the Applicant and his sister lived with him.
- A June 2015 affidavit from [REDACTED] who states that he met the Applicant in 1980 at the Applicant's uncle's house and was acquainted with the Applicant until 1981.
- A June 2015 affidavit and an undated affidavit from [REDACTED] who states that he met the Applicant between 1980 and 1981 at a grocery store and subsequently, on occasion, saw the Applicant at church or at parties. The individual further states that he knows most of the Applicant's family and is aware that that the Applicant took two short trips to Mexico, in November 1987 and in January 1989.
- A March 2006 affidavit from [REDACTED] who states that that he has known the Applicant since October 1981, when he arrived with his brother. The individual further states that he is a good friend of the Applicant's uncle, that the Applicant lived with his uncle, and that they attended the same church.
- An undated letter from [REDACTED] who states that she met the Applicant and two of his siblings in 1981. The individual further states that the Applicant and his siblings lived with their uncle and she attended the same church as the Applicant and his family.
- An undated affidavit from [REDACTED] who states that she knew the Applicant since the early 1980s and knows most of the Applicant's family.
- An undated affidavit from [REDACTED] who states that he met the Applicant in January 1983, when the Applicant and his uncle visited him at his home for a New Year's Eve celebration. He further states that the Applicant and his siblings often visited his house to watch sports and attend cookouts.
- An undated affidavit from [REDACTED] who states that he has been acquainted with the Applicant since 1985 through the Applicant's uncle. He further states that he frequently spent time with the Applicant and his family.
- Two affidavits dated June 2015 and March 2006, from [REDACTED] stating that he met the Applicant in 1987 when the Applicant took his uncle's truck to him for auto repair service. The individual further states that he and the Applicant became good friends.
- A March 2006 affidavit from [REDACTED] who states that he met the Applicant in 1987 when the Applicant was working as a mechanic's assistant. The individuals further states that he subsequently gave the Applicant rides to the laundromat on Wednesdays after the Applicant's workday ended.

The Applicant does not submit additional evidence in support of his claim that he was physically present or had continuous residence in the United States during the entire requisite period or that he entered the United States in 1981. However, the Applicant asserts that he was [REDACTED] years old when he arrived in the United States. He further states that his uncle did not send him to school; rather he stayed at home until he was old enough to find a job. The Applicant maintains that because he did not go to school or have legal status, he does not have school records, employment records, or other documentation to establish his residence.

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To be considered probative and credible, witness affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged.

Of the declarations submitted, six attest to the Applicant's presence in the United States before 1982. The remaining affidavits attest to the Applicant's presence between the early 1980s and 1987. However, the affidavits contain information that is inconsistent with other evidence in the record. For example, [REDACTED] states that she met the Applicant in the early 1980s when he was a very young man and that he "quickly found a job and worked very hard every day that he could. He was soon able to send money to his family in Mexico." This is inconsistent with the Form I-687 that indicates that the Applicant did not work between 1981 and 1986, and his 2008 affidavit, in which he stated that when he first arrived, he stayed home and when he became older he began working. There are also inconsistencies regarding whom the Applicant traveled with when he traveled to the United States. In his 2006 affidavit, the Applicant's uncle states that the Applicant first lived with him and he was able to help the Applicant and his sister. In his 2015 affidavit, the uncle stated that the Applicant arrived with his father. Yet [REDACTED] states in his affidavit that the Applicant entered the United States with his brother. In addition, [REDACTED] letter is on behalf of an individual that does not share the same name as the Applicant.

The record also reflects that the Applicant was apprehended in Colorado in 1991 while working for a roofing company in Colorado. During his subsequent deportation proceedings, he stated that he had been residing in Colorado for 5 months. This contradicts his statement on Form I-687 that he lived in Texas between 1990 and 1993. The Applicant's statements in his deportation proceedings also undermine the credibility of the affiants and declarants who claim that they had known the Applicant since the 1980s until present but never mentioned his residence in Colorado in 1991.

The Applicant has not submitted documentation to address these inconsistencies, which cast serious doubt on the authenticity of the Applicant's evidence and on his claim that he resided continuously in the United States from a date prior to January 1, 1982, through May 4, 1988. Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In addition, as stated earlier, when affidavits are presented to establish eligibility, they must overcome the unavailability of both primary and secondary evidence. Here, although the Applicant asserts that he was worked for two employers, located in the same town as the affiants, from 1986 to 1993, he was unable to provide affidavits from these employers.

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We find that the declarations and affidavits in the record that purport to establish the Applicant's residence in the United States during the statutory period are not objective and independent evidence such that they might overcome the inconsistencies in the record regarding his claim that he maintained continuous residence in the United States throughout the statutory period, and that they are not probative evidence.

Therefore, the Applicant did not meet his burden of proof in establishing his continuous unlawful residence since January 1, 1982, and until he attempted to apply for legalization. Therefore, we find that the Applicant has not established eligibility for temporary resident status under section 245A of the Act and the CSS/Newman Settlement Agreements.

B. Admissibility

Moreover, the record reflects that the Applicant is inadmissible under 212(a)(6)(C)(i) of the Act, because he misrepresented the fact that he had previously been deported. Even though the deportation was outside the statutory period and did not disrupt the continuity of his residence, this misrepresentation is material because the deportation triggered the Applicant's inadmissibility under section 212(a)(9)(A) of the Act. The Applicant is also inadmissible under sections 212(a)(9)(B) and 212(a)(9)(C) of the Act, for having been deported in 1991 then reentering the United States without being admitted on an unknown date and, according to the representations made on Form I-687, residing in the United States illegally for over 1 year after April 1, 1997.⁴

The Applicant is therefore inadmissible under sections 212(a)(6)(C)(i), 212(a)(9)(A), 212(a)(9)(B), and 212(a)(9)(C) of the Act. As the Applicant has not established that he is otherwise eligible for adjustment of status to a temporary resident, we need not consider whether the Applicant qualifies for a waiver of inadmissibility.

III. CONCLUSION

The Applicant has the burden of proving eligibility for status as a temporary resident. Section 291 of the Act, 8 U.S.C. § 1361. The Applicant has not met that burden. Accordingly, we dismiss the appeal. This decision constitutes a final notice of ineligibility.

ORDER: The appeal is dismissed.

Cite as *Matter of A-M-M-*, ID# 17576 (AAO Sept. 12, 2016)

⁴ The record reflects that the Applicant then traveled to Mexico in [REDACTED] 2000 to marry his spouse and reentered the United States within the same month. These grounds of inadmissibility may be added to and addressed in the context of the Applicant's pending Form I-690.