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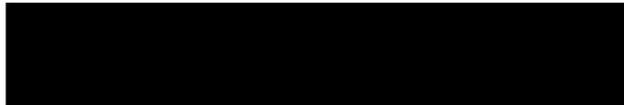
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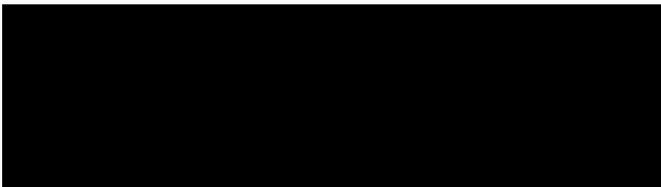
Applicant:



APPLICATION:

Application for Temporary Resident Status under 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 "R. Wiemann".

Robert P. Wiemann, 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 District Director (director) in New York City. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application on the ground that the applicant failed to establish his continuous residence in the United States in an unlawful status from before January 1, 1982 through the date of attempted filing during the original one-year application period that ended on May 4, 1988.

An applicant for temporary resident status – under section 245A of the Immigration and Nationality Act (the Act) – 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. *See* 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. *See* 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. *See* 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. *See* 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 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).

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).

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.* 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 or petition.

Although the regulations provide an illustrative list of contemporaneous documents that an applicant may submit, the list also permits the submission of affidavits and any other relevant document. *See* 8 C.F.R. § 245a.2(d)(3)(vi)(L).

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 applicant, a native of Colombia who claims to have resided in the United States since November 1981, filed his application for temporary resident status under section 245A of the Act (Form I-687), together with a Form I-687 Supplement, CSS/Newman (LULAC) Class Membership Worksheet, at the New York District Office on October 17, 2005. At that time the only evidence in the record of the applicant’s residence in the United States during the 1980s was a series of affidavits dating from 1989 and 1990. They included the following:

- An affidavit by [REDACTED] a resident of Corona, New York, dated November 10, 1989, stating that the applicant rented a room from her at [REDACTED] [REDACTED], in Corona, from November 1981 to September 1989.
- An affidavit by [REDACTED], residing at [REDACTED] in Bronx, New York, dated December 28, 1989, stating that she had known the applicant since December 1981 and knew that he resided at [REDACTED] in Corona

from November 1981 to September 1989, at which time he moved to [REDACTED] in Bronx, New York.

- An identically worded affidavit by [REDACTED], residing at [REDACTED] [REDACTED] in Bronx, New York, dated December 28, 1989, stating that he had known the applicant since December 1981 and knew that he resided at [REDACTED] [REDACTED] in Corona from November 1981 to September 1989, at which time he moved to [REDACTED] in Bronx, New York.

Another identically worded affidavit by [REDACTED], residing at [REDACTED] [REDACTED] in Bronx, New York, dated May 8, 1990, stating that she had known the applicant since December 1981 and knew that he resided at [REDACTED] [REDACTED] in Corona from November 1981 to September 1989, at which time he moved to [REDACTED] in Bronx, New York.

On March 31, 2006, the director issued a Notice of Intent to Deny (NOID) the application, indicating that the evidence of record was insufficient to establish the applicant's continuous unlawful residence in the United States from before January 1, 1982 through the date of attempted filing during the original one-year application period that ended on May 4, 1988. The director advised that the affidavits were substantively inadequate, and referred to an apparent discrepancy between the applicant's oral testimony at his legalization interview on March 14, 2006 and the information he provided in his Form I-687 regarding the number of times he departed the United States during the statutory period. The applicant was granted 30 days to submit additional evidence.

Counsel responded to the NOID by asserting that the documentation of record – in particular, the affidavits from 1989 and 1990 – should be viewed as enough evidence to establish the applicant's continuous residence in the United States from 1981 onward. Counsel also cited the applicant's clarification regarding the circumstances of his first child's birth in Colombia in February 1983, which did not involve his departure from the United States. According to the applicant, his wife accompanied him to the United States in 1981, became pregnant in 1982, and returned to Colombia without him to have their child in early 1983.

In a Notice of Decision dated May 30, 2006, the director denied the application, stating that the applicant's response to the NOID was insufficient to overcome the grounds for denial.

On appeal, counsel reiterates the applicant's claim to have entered the United States before January 1, 1982 and lived continuously in the country through the date he attempted to file for legalization during the original application period that ended on May 4, 1988. Counsel states that the applicant does not have any more documentation to submit and contends that the evidence already on file is sufficient proof of the applicant's eligibility for legalization under section 245A of the Act.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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. The AAO determines that he has not.

The applicant has no contemporary documentation from the 1980s demonstrating that he resided in the United States during the years 1981-1988. For someone claiming to have lived and worked in this country continuously since late 1981, it is remarkable that he is unable to produce a solitary document dating before 1989.

The affidavits from 1989 and 1990 have minimalist, fill-in-the-blank formats with little personal input by the affiants. While they all claim to have known the applicant since late 1981, the affiants provide little or no information about how they met him, his life in the United States and their interaction with him over the years, and where he worked during the 1980s. Nor are the affidavits accompanied by any documentary evidence from the affiants – such as photographs, letters, and the like – of their personal relationship with the applicant in the United States during the 1980s. In view of these substantive shortcomings, the AAO finds that the affidavits have little probative value. They are not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through the date of attempted filing during the original one-year application period that ended on May 4, 1988.

Given the lack of probative evidence in the record, the AAO determines that the applicant has failed to establish that he resided continuously 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. Accordingly, the applicant is ineligible for temporary resident status under section 245A(a)(2) of the Act.

The appeal will be dismissed, and the application denied.

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