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U.S. Citizenship  
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Services



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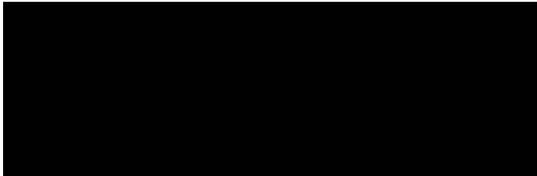
Applicant:



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. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case 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.

*for Michael T. Kelly*  
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, New York. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant 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 February 23, 2005. The applicant was interviewed on or about April 12, 2006 in connection with his Form I-687. On April 12, 2006 the director issued a Notice of Intent to Deny (NOID) the application. Upon review of the record, the director denied the application.

On appeal, the applicant submits a form brief. The brief also includes statements typewritten in the form brief, such as: "What in the world could a class member who suffered to enter the USA illegally [more than two decades ago] posses [sic] to 'furnish evidence of such entry or show entry to Mexico at that time,'" and "There is no contradiction as stated on the decision of April 12, 2006. We belief, [sic] the current practice violates the respondent's own regulations, and that of the Court, as they have interpreted them;" and an assertion that Citizenship and Immigration Services (CIS) should take into account that some flexibility may be necessary in accepting documents to prove continuous residence as the applicant, an undocumented alien, is a person, without a suitable place to stay and store his belongings. The applicant contends that he will suffer irreparable harm if the green card is not issued.

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 applicant attempted to file the application. 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 or attempting to file the application. 8 C.F.R. § 245a.2(b)(1).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), "until the date of filing" shall mean 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).

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).

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 has furnished sufficient credible evidence to establish his entry into the United States prior to January 1, 1982 and continuous unlawful residence since such date through the date he attempted to file the application.

On the Form I-687, the applicant listed his date of birth as January 24, 1967 and that he was a native and citizen of Ecuador. He indicated he lived in Flushing, New York from October 1981 to August 1989 and had been a member of the St. Johnson Church in Queens, New York during that time period. The applicant also noted that he left the United States in September 1987 to return to Ecuador and the purpose of the trip was because his brother had died. The record also includes the applicant's declaration dated January 24, 2003 indicating that he had briefly traveled outside the United States in September 1987 to attend his brother's funeral in Ecuador.

In addition to the applicant's January 24, 2003 declaration, the record contains:

- A February 9, 2002 affidavit signed by \_\_\_\_\_ indicating that she met the applicant in 1981 at her mother's birthday party when she danced with the applicant. Ms. \_\_\_\_\_ recalls that the applicant had to take a trip because his aunt was very ill and he had to visit her before she passed away and that she was very concerned

regarding his coming back to the United States because it was risky crossing the border. The affiant indicates that she and the applicant remain friends to this day.

- A January 31, 2002 letter on the Our Lady of Sorrows Church letterhead, noting its location in Corona, New York. The pastor of the church indicates that he had been pastor since 1991 and that the applicant had been coming to the church for many years. The letter does not contain the church seal.

On April 6, 2006, the director issued a NOID noting: the applicant's claim that he had entered the United States through Mexico, but that he had not provided evidence of his entry into Mexico; the record contained only one affidavit that did not appear credible or amenable to verification; and that the applicant had provided statements on his application that he had contradicted in his oral testimony regarding his attempt to apply for "amnesty."

In rebuttal to the NOID, the applicant submitted a second affidavit, dated April 7, 2006, from Norma Castellano that includes her address and telephone number as well as the same information regarding the circumstances of meeting the applicant as in the affiant's February 9, 2002 affidavit.

On June 2, 2006, the director denied the application observing that the discrepancies in the applicant's testimony and the evidence of record required objective evidence to support the claim. The director noted the re-submission of [REDACTED]'s affidavit with her phone number but found it insufficient to establish the applicant's continuous unlawful physical presence in the United States for the requisite time period.

As referenced above, on appeal, the applicant submits a form brief that includes assertions that suggest that the applicant could not show his entry into Mexico because of the lapse of time, that the applicant had not made contradictory statements, and that CIS should be flexible when considering the inability of undocumented aliens to provide proof of continuous residence in the United States for the applicable time period.

Preliminarily, the AAO finds that the use of a form brief that does not apply pertinent law to facts relevant to this proceeding is not persuasive. The AAO has reviewed the totality of the record and finds that the applicant has failed to submit any credible documentation to establish his entry into the United States prior to January 1, 1982 and continuing for the requisite time period. For example, the affidavit submitted by [REDACTED] indicates that she met the applicant in 1981 at a party and that she and the applicant remained friends. [REDACTED] recites the circumstances of the applicant's departure from the United States indicating that the applicant had to visit an ill aunt before she passed away. This is inconsistent with the applicant's claim on the Form I-687, in his January 24, 2003 declaration, and in oral testimony that he departed the United States in 1987 for his brother's funeral. The AAO finds this inconsistency undermines the actual relationship between the applicant and the affiant. Moreover, the affidavit does not provide detail of the circumstances and events of subsequent interactions between the applicant and the affiant sufficient to establish the applicant's continuous residence.

In addition, the applicant indicates on his Form I-687 that he was affiliated with the St. Johnson Church in Queens, New York from October 1981 to the date he filed the application on February 23, 2005. The applicant, however, has also provided a letter from Our Lady of Sorrows Church, located in Corona, New York indicating that the applicant had been coming to the church for many years. As noted earlier, the January 31, 2002 letter does not contain a church seal. The letter also does not contain inclusive dates of the applicant's membership in the church and does not establish the origin of the information the pastor is reporting on as required by the regulation at 8 C.F.R. § 245a.2(d)(3)(v). Moreover, this letter appears to contradict the applicant's statement on the Form I-687 regarding his church affiliation. The AAO does not find this evidence credible or sufficient to establish the applicant's entry into the United States prior to January 1, 1982 and continuous unlawful residence for the requisite time period.

Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). The applicant has provided two affidavits from the same person and with substantially the same information and one letter to establish his entry into the United States prior to January 1, 1982 and continuous unlawful presence for the requisite time period. These two documents reflect a lack of concrete and specific details and appear to contain information that is contradictory to the applicant's statements. The general nature of information that characterizes these documents lacks sufficient indicia to establish the reliability of their assertions. Although the AAO is cognizant of the difficulty in obtaining documentation of any undocumented alien's presence in the United States, 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.

In this matter, the referenced documents above and the applicant's statement comprise the only documentation of the applicant's residence in the United States from prior to January 1, 1982 through the requisite time period. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period detracts from the credibility of his claim. 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 inconsistencies in the record and the lack of credible supporting documentation, it is concluded that the applicant has failed to meet his burden of proof and failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application, 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 appeal will be dismissed.

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