

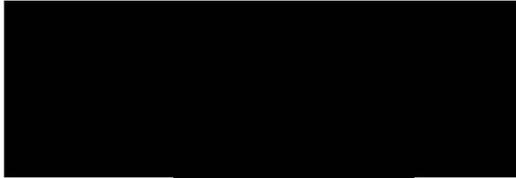


U.S. Citizenship
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Services

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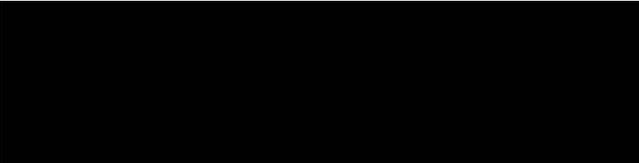
Office: BOSTON

Date: **SEP 09 2008**

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:



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. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed or rejected, 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.

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, Boston. 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. The director denied the application on January 12, 2007. The director determined that the applicant failed to establish, by a preponderance of the evidence, continuous unlawful residence in the United States throughout the requisite period.

On appeal the applicant, through counsel, states that the denial was an abuse of discretion and that the director failed to correctly apply the “preponderance of the evidence” standard to the evidence submitted by the applicant in support of his application. The applicant has not submitted additional evidence on appeal.

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).

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 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 or petitioner 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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that she resided in the United States for the duration of the requisite period. Here, the applicant has not met his burden of proof.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on December 21, 2005. The applicant submitted the following documents in support of his application:

- A written statement from [REDACTED] dated December 2, 2005. The declarant states that she met the applicant at church in March of 1980, and that the applicant was residing with his cousin at [REDACTED] in Lowell, Massachusetts at that time. The declarant does not provide details such as how she dates her initial acquaintance with the applicant or the nature and frequency of her contact with the applicant during the requisite period. Lacking such relevant detail, the affidavit can be afforded only minimal weight as evidence of the applicant’s residence in the United States during the requisite period.
- A written statement from [REDACTED] dated December 7, 2005. The declarant, who is the applicant’s cousin, claims to have personal knowledge that the applicant entered the United States in March of 1980. The declarant states that the applicant came to the United States because he had “been wanting to come to the United States for better opportunity.” The declarant states that the applicant lived with the declarant from the time of his entry in the United States until July of 1997. Although the applicant, who would have been ten years old in March of 1980, testified that he entered the United States with his father, the declarant does not mention the applicant’s father. Further, the statement lacks probative details regarding the events and circumstances of the applicant’s residence during the requisite period. Lacking such relevant detail, the affidavit can be afforded only minimal weight as evidence of the applicant’s residence in the United States during the requisite period.

The applicant also submitted two letters, and the envelopes used to send those letters, which were purportedly sent from Brazil by the applicant's mother to the applicant's father in the United States. One letter is dated March 5, 1982 and has a corresponding envelope that bears a post mark dated March 8, 1982. The other letter is dated July 8, 1983 and has a corresponding envelope that bears a post mark dated July 10, 1983. The applicant also submitted English translations of the letters. In each letter, according to the translations, the applicant's mother inquires about the applicant. Although these letters tend to indicate that the applicant was present in the United States during at least a portion of 1982 and 1983, they are insufficient to establish his residence in the United States during the requisite period.

In addition, the applicant submitted documents that fall outside of the requisite period. These include employer letters, banks statements, lease documents, and utility bills. As these documents fall outside of the requisite period, they have no probative value as evidence of the applicant's residence during the requisite period.

The evidence must be evaluated not by the quantity of evidence alone but by its quality. *Matter of E-M-*, *supra* at 80. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of her 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 applicant's reliance upon documents with little or no probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States for the requisite period. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

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