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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



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

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FILE: [REDACTED]
MSC 06 088 11798

Office: NEW YORK

Date: **MAY 04 2009**

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:

SELF-REPRESENTED

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 "J. Grissom", written over a circular stamp or mark.

John F. Grissom
Acting 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 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. The director determined that the applicant had not established by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status for the duration of the requisite period, and that the evidence submitted by him did not establish his eligibility for the immigration benefit sought. The director denied the application, finding that the applicant had not met his burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements. Specifically, the director noted that the witness statements provided by the applicant in support of his claim lacked detail and were deemed not to be credible or verifiable. The director further noted that one witness [REDACTED] stated that she signed an affidavit provided by the applicant, and that while she remembers the applicant residing in the United States prior to 2001, she has no recollection of the applicant residing in the United States prior to January 1, 1982.

On appeal, counsel states that the affidavits provided by the applicant are “good and verifiable,” and provides telephone numbers for one of the witnesses. Counsel disputes the statement of the director relative to the statements made by [REDACTED] when immigration officials attempted to verify the contents of her affidavit. Counsel further states that immigration officials did not allow the applicant to file an application for amnesty, and that the applicant’s application should be approved.

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 245(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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her 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).

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 petitioner 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 (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. The record contains the following evidence which is material to the applicant's claim:

- The applicant provided two affidavits ([REDACTED] and [REDACTED]) in support of his application. Both affidavits are general in nature and simply state that the affiants know the applicant and that the applicant has resided in the United States for the duration of the requisite period.
- The affiant provided an unsworn statement stating that he has continuously resided in the United States from 1981 to 1988, and that all supporting documentation provided by him is true and correct.

As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. The witness statements provided do not provide detailed evidence establishing how the witnesses knew the applicant, the details of their association or relationship, or detailed accounts of an ongoing association establishing a relationship under which the witnesses could be reasonably expected to have personal knowledge of the applicant's residence, activities and whereabouts during the requisite period covered by the applicant's Form I-687. To be considered probative, 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 time period. The statements must contain sufficient detail, generated by the asserted contact with the applicant, to establish that a relationship does in fact exist, how the relationship was established and sustained, and that the witness does, by virtue of that relationship, have knowledge of the facts asserted. The witness statements submitted by the applicant, therefore, are not deemed probative and are of little evidentiary value.

The only other evidence submitted by the applicant in support of his application is his unsworn statement. The applicant's statement, however, will not sustain his claim. As previously noted, in order to meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her 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 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 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 applicant's reliance upon documents with minimal probative value, it is concluded that the evidence submitted fails to establish continuous residence in an unlawful status in the United States during the requisite period.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he has 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.

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