

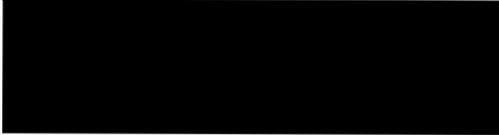
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, D.C. 20529-2090



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**



FILE:

MSC 06 049 13112

Office: HOUSTON

Date:

**SEP 29 2009**

IN RE:

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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter 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.

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, Houston, Texas, and 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. 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.

On appeal, counsel asserts that the director did not consider the evidence submitted by the Houston Health Department and the Catholic Church of Holy Ghost.

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 presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), “until the date of filing” shall mean until the date the alien attempted to file a completed Form I-687 application and fee or was caused not to timely file, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. Paragraph 11, page 6 of the CSS Settlement Agreement and paragraph 11, page 10 of the Newman Settlement Agreement.

An alien applying for adjustment of status 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. *See* 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 including affidavits 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.

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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record reflects that on September 12, 1995, a Form I-130, Petition for Alien Relative,<sup>1</sup> was filed on behalf of the applicant by his brother, who indicated at item 13 that the applicant had never been to the United States.

The record also reflects that on his DS-156, Nonimmigrant Visa Application, dated June 6, 2002, the applicant indicated that he had never been in the United States.

At the time the applicant filed his Form I-687 application, he provided no documentation to establish continuous residence and physical presence in the United States during the requisite period. In response to a Notice of Intent to Deny dated December 16, 2005, the applicant, in an attempt to establish continuous unlawful residence since prior to January 1, 1982 through the date he attempted to file his application, submitted:

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<sup>2</sup> The Form I-130 was assigned alien registration number [redacted] and was denied on May 7, 1996.

The Form I-130 was

- A photocopied health certificate dated May 15, 1981, from St. Joseph Hospital in Houston, Texas.
- A letter dated October 10, 2006, from [REDACTED], pastor of the Catholic Community of Holy Ghost in Houston Texas, who indicated that the applicant was a registered member in 1981 and 1982
- Two envelopes addressed to the applicant in Houston, Texas.

On June 6, 2007, the director issued a Notice of Intent to Deny, which advised the applicant that [REDACTED] was contacted and he indicated a review of church records reflects that the applicant's name was registered at the church in 1986. The applicant was advised of the information he indicated on the DS-156 and that his brother, the petitioner, indicated on the Form I-130 that he had never been to the United States. The applicant was advised that the documentation submitted with his Form I-687 application was insufficient to establish continuous residence in the United States since before January 1, 1982.

The applicant was given 30 days in which to submit a rebuttal. The applicant, however, failed to respond within the time allowed. The director determined that the applicant had failed to submit sufficient credible evidence establishing his continuous residence in the United States since prior to January 1, 1982, and, therefore, denied the application on September 12, 2007.

On September 18, 2007, a response to the Notice of Intent to Deny was received at U.S. Citizenship and Immigration Services. The documentation will be considered on appeal.

The applicant, in response, asserted that he entered the United States on January 1, 1981 and the documents submitted supported his claim of residence in the United States. In regards to the Form I-130 and DS-156, the applicant indicated:

I left the country because we believed that I had to be living outside the United States to be eligible.

Finally, the only time I have been untruthful was when I applied for a visitor visa in 2002 at the consulate I was afraid that if I informed the consulate that I had previously gone to the U.S. illegally they would deny me a visa so I would not be able to return to U.S. legally. I was trying to be in the US legally.

On appeal, counsel submits a copy of the applicant's response to the Notice of Intent to Deny along with a letter dated October 23, 2006, from [REDACTED] of Knights of Columbus in Houston, Texas, who attested to the applicant's moral character.

The statements issued by counsel and the applicant have been considered. However, the AAO does not view the documents discussed above as sufficient to support a finding that the applicant entered the United States prior to January 1, 1982, and resided since that date through the date he attempted to file his application.

The letter from [REDACTED] raises questions to its authenticity as the applicant did not list any affiliation with a religious organization during the requisite period at item 31 on his Form I-687 application.

The applicant claimed on his Form I-687 application that he was self-employed; however, he provided no evidence such as letters from individuals with whom he had done business as required under 8 C.F.R. § 245a.2(d)(3)(i).

The postmarked envelopes may serve to establish the applicant's residence in the United States subsequent to the requisite period. The first envelope was postmarked on October 20, 1988. The other envelope was addressed to the applicant at [REDACTED]. The applicant indicated in a document that his brother resided at this address from 1989 to 2002 and he claimed on his Form I-687 application residence at the address in 2003. It is noted that two of the stamps on the envelope contain a date in December 2003.

The applicant claims to have been residing in the United States since January 1981, however, the documents submitted have been discredited. The applicant has not provided any evidence such as lease agreements, rent receipts, utility bills or affidavits from individuals who could attest to his residence during the qualifying period.

The signature on the certificate from St. Joseph Hospital is indecipherable, thereby giving rise to questions regarding whether the signature is that of a person who was authorized and affiliated with the hospital. In addition, no supporting documents were submitted to support the certificate. It is unclear why the applicant would keep this certificate purportedly dated in 1981, but not documentation such as lease agreements, utility bills or rent receipts during this period and subsequent years.

The applicant's statement in regards to the Form I-130 is without merit as no affidavit from the petitioner has been submitted to support this statement. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

It is incumbent upon the 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 applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The absence of sufficiently detailed supporting documentation to corroborate the applicant's claim of continuous residence during the requisite period seriously detracts from the credibility of this 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 contradictory statements on the DS-156 and his reliance upon documentation that has been called into question, it is concluded that he has 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.

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