

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

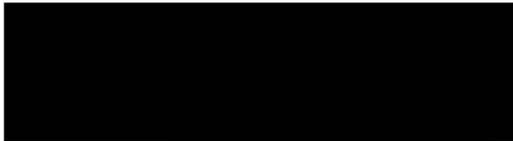
PUBLIC COPY

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

41



FILE: [Redacted]
MSC-05-271-14642

Office: ATLANTA

Date: **DEC 11 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:

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. 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.

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, or *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, Atlanta, 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 to U.S. Citizenship and Immigration Services (USCIS). The director denied the application, finding that the applicant has not submitted sufficient credible evidence to establish eligibility for temporary resident status pursuant to Section 245A of the Act.

On appeal, the applicant reaffirms his claim that he legally entered the United States when he was three years old along with his parents before January 1, 1982 and has continuously resided in the United States since then. The applicant also resubmits all of the evidence which he previously submitted to the director.

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).

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). To meet his or her

burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.2(d)(6).

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, "[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 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 case is whether the applicant entered the United States before January 1, 1982 and has continuously resided in the United States in an unlawful status for the requisite period of time.

To show that he has continuously resided in the United States, the applicant furnished four affidavits and two letters from an organization called Congress of Racial Equality (CORE). In their affidavits, [REDACTED] and [REDACTED], claim to have known the applicant since 1982, 1986, 1987, and 2005 respectively, but they fail to provide detailed information such as how they initially met the applicant, how frequently they contact him, and how they have personal knowledge of the applicant's presence and address in the United States during the requisite period. Their brief comments such as "he (the applicant) is like a son to me" or "I knew him (the applicant) through a personal acquaintance" are not persuasive as evidence of the applicant's claim that he entered the United States before January 1, 1982 and has resided continuously in the United States since such a date.

Additionally, [REDACTED], who claims to have known the applicant since 1982, listed in her affidavit [REDACTED] as the address of the applicant from 1982 to 2006. The applicant, however, at part # 30 of his Form I-687 listed [REDACTED], from 1981 to 1984. This discrepancy between [REDACTED]'s affidavit and the information at part # 30 of the applicant's Form I-687 is deemed material and diminishes the affiant's credibility that she has known the applicant since 1982.

On appeal, the applicant claims that CORE helped him and his parents to apply for legalization and currently has their immigration files. To support these claims, the applicant submitted two letters that he allegedly received from CORE. The envelopes from CORE show the applicant's name and address

at [REDACTED] The letters are typed on the organization letterhead and addressed to either "member" or "client-member." The applicant's name or address does not appear anywhere on the letters, thus it is not clear whether or not the applicant in this case is the intended recipient of these letters or whether the applicant is a member or a client of CORE. Either way, these letters without other corroborating documents do not prove that CORE has helped the applicant and his parents in their legalization pursuit or that CORE has their files, and for this reason, these letters do not have probative value as evidence of the applicant's claim of eligibility.

Finally, the record indicates that the applicant told a USCIS officer during interview that he left the United States in 1992 and returned in 1996. The applicant listed July 20, 1996 as the date of his last entry into the United States in his Form I-687. On appeal, the applicant states that he has continuously resided in the United States since he arrived with his parents before January 1, 1982. The discrepancy between the applicant's testimony and his written statement on appeal pertaining to the date of his last entry into the United States seriously diminishes his credibility and materially affects his eligibility for temporary resident status pursuant to Section 245A of the Act.

The absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period as well as the discrepancy between his testimony and his statement on appeal noted in the record, seriously detract 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 discrepancy in the record and the lack of credible supporting documentation, it is concluded that 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.