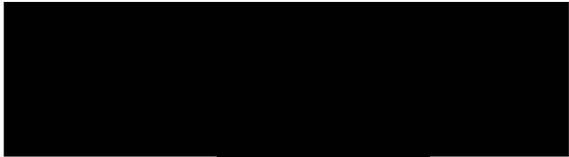


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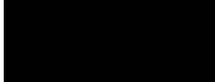
U.S. Citizenship
and Immigration
Services

PUBLIC COPY



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FILE:



Office: NEW YORK

Date:

DEC 29 2008

MSC 06 089 13342

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. 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 "John F. Grissom".

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 on December 28, 2005. Upon review, the director determined that insufficient evidence has been presented to establish eligibility under section 245A of the Act. On March 31, 2006, the director issued a notice of intent to deny (NOID) stating that the applicant had not established by a preponderance of the evidence that he had entered the United States prior to January 1, 1982 and thereafter resided continuously in the United States for the duration of the requisite period. The applicant was granted 30 days from the date of the notice to submit additional evidence in response to the NOID. The applicant did not submit additional evidence within the time allotted. The director denied the application, finding that the applicant had not provided credible evidence to establish that he had entered the United States prior to January 1, 1982 and thereafter continuously resided in the United States in an unlawful status since prior to January 1, 1982 and for the duration of the requisite period.

On appeal, counsel states that the applicant has met all the pertinent requirements to obtain lawful status.

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.

At issue in this proceeding is whether the applicant submitted sufficient credible evidence to meet his burden of establishing that he (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. Here, the applicant has failed to meet this burden.

In an interview conducted on March 29, 2006, the applicant stated that he first entered the United States without inspection in December 1980 through Canada.

In an attempt to establish entry into the United States before January 1, 1982, and continuous unlawful residence in the United States, the applicant provided affidavits, a lease agreement, a letter from his church and a copy of his passport. The AAO will consider all of the evidence relevant to the requisite period.

The sworn affidavits from [REDACTED] and [REDACTED] fail to attest to the applicant’s illegal entry into the United States prior to January 1, 1982 and his continuous unlawful residence in the United States for the duration of the requisite period. In their affidavits, the affiants

state that they have known the applicant in the United States since 1982, 1981 and 1986, respectively. [REDACTED] states that 1986 is when he first met the applicant in the United States. He is thus unable to establish the applicant's presence throughout the requisite period.

None of the witness statements provide concrete information, specific to the applicant and generated by the asserted associations with him, which would reflect and corroborate the extent of those associations and demonstrate that they were a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the affidavits. To be considered probative and credible, witness affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Upon review, the AAO finds that the affidavits do not contain sufficient detail to establish the reliability of their assertions. The applicant on appeal did not submit evidence to refute any of the director's concerns regarding the lack of evidence provided to prove his entry prior to January 1, 1982 and his continuous residency in an unlawful status throughout the requisite period. The affidavits, while providing some evidence of the applicant's presence in the United States, are insufficient to establish the applicant's 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 requisite period. Therefore, the affidavits have little probative value.

The remaining relevant evidence is comprised of the applicant's statement and a lease agreement. The lease agreement does not indicate the apartment number and the address of the leased premises and does not establish the applicant's residence in the United States. Further, there is no evidence indicating that the lease was renewed. The applicant's statement indicates that he entered the United States in December 1980 and lists his address in New York during the requisite period. He states that his wife returned to Israel in 1997 to give birth to their child but does not address the birth of the child in Israel in 1987 as noted by the director. The applicant's testimony is not corroborated by sufficiently detailed affidavits to be probative.

The record also contains a letter from [REDACTED]. The letter states that the applicant is a member in good standing of the congregation and participates at functions. The letter fails to specify the applicant's dates of membership. The statement does not corroborate any of the information given by the applicant concerning his initial entry, periods and places of residence and employment in the United States. Further, the regulation at 8 C.F.R. § 245a.2(d)(3)(v) provides requirements for attestations made on behalf of an applicant by churches, unions, or other organizations. Attestations must (1) identify applicant by name; (2) be signed by an official (whose title is shown); (3) show inclusive dates of membership; (4) state the address where applicant resided during membership period; (5) include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; (6) establish how the author knows the applicant; and (7) establish the origin of the information being attested to. The

letter did not contain all of the aforementioned requirements and therefore will be given nominal weight.

In the instant case, the applicant has failed to submit sufficient evidence to overcome the director's denial. The evidence, calls into question the credibility of the applicant's claim of continuous unlawful residence in the United States throughout the requisite period. The evidence submitted is insufficient to establish the applicant's 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 requisite period.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and 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