

U.S. Department of Homeland Security  
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FILE:

MSC-06-039-12917

Office: LOS ANGELES

Date: NOV 20 2008

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:

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 be "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 of the Los Angeles office. 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.

On appeal, the applicant states that the immigration officer requested the applicant's school records in a sealed envelope and he provided it, but he could not keep a copy because it was in a sealed envelope. He also states that he has provided sufficient evidence to establish that he resided in the United States throughout the requisite period.

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) 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 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 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 shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on November 8, 2005. In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided voluminous documentation. Documents not relating to the requisite period will be given no weight towards establishing that the applicant resided in the United States throughout the requisite period.

The applicant provided documents listing address or employer information that are inconsistent with the information provided on his Form I-687 application. These include a Form W-2, a Form 1040 and pay stubs from 1988; a receipt from 1986; and attestations from [REDACTED] and [REDACTED].

The inconsistencies between these documents and the applicant's statements on his Form I-687 cast some doubt on his claim to have resided in the United States throughout the requisite period.

The applicant provided a pay stub dated December 16, 1982. This pay stub fails to provide an employer name. The applicant also provided a receipt from 1987, on which his name and the date have been handwritten. These documents lack contact information with which their authenticity can be verified. Therefore, they will be given only nominal weight in determining whether the applicant has established that he resided in the United States throughout the requisite period.

The applicant provided a receipt from Car Aroma Supplies, Inc. in Wilmington, California dated November 30, 1981. This document fails to include the applicant's address. Therefore, it merely constitutes some evidence of the applicant's presence in the United States on November 30, 1981.

The applicant provided a copy of his driver's license, issued on February 9, 1988. This document constitutes some evidence that the applicant resided in the United States during February 1988.

The applicant submitted an attestation from [REDACTED] who stated that the applicant entered the United States in illegal status prior to August 1981. This attestation fails to provide detail regarding [REDACTED]' knowledge of the applicant's activities, when and how she met the applicant, and the frequency of their contact during the requisite period. The applicant provided a declaration from [REDACTED] Interim Custodian of Records of the Santa Ana Unified School District. This declaration states that the applicant enrolled at McFadden Middle School on May 27, 1981 and attended until June 19, 1984. This declaration lacks detail regarding the origins of the information provided, the applicant's address during the requisite period, whether there are any school records available, and whether CIS can have access to the records. As a result of their lack of detail, these documents will be given only nominal weight in determining whether the applicant has established that he resided in the United States throughout the requisite period.

The record also includes a Form I-687 application signed by the applicant under penalty of perjury on October 12, 1995 and submitted to establish class membership. This Form I-687 includes information that is inconsistent with the current Form I-687 relating to the applicant's addresses during the requisite period, the dates of his one absence from the United States during the requisite period, and his employment during the requisite period. These inconsistencies cast serious doubt on the applicant's claim to have resided in the United States throughout the requisite period.

The record includes a Biographic Information Form G-325A signed by the applicant on November 18, 1997 under severe penalties for knowingly and willfully falsifying or concealing a material fact. The applicant indicated that his last address outside the United States of more than one year was an address in Mexico from January 1985 to January 1987. This information directly conflicts with the applicant's claim to have resided in the United States throughout the requisite period.

The inconsistencies in the record are material to the applicant's claim in that they have a direct bearing on his residence in the United States during the requisite period. As stated previously, doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *See Matter of Ho, supra.* 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.