

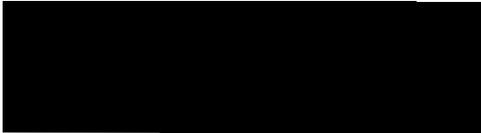
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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE:

MSC-06-095-16115

Office: NEW YORK

Date:

AUG 07 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. 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, 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 (together comprising the I-687 Application). The director denied the application and determined that the applicant was ineligible for temporary resident status. The director concluded based on the applicant's testimony and the evidence of record that the applicant did not file the application during the original legalization period. Further, the director held that the applicant was inadmissible since he had submitted fraudulent documents as evidence of his continuous residence in the United States since before January 1, 1982.

On appeal, counsel for the applicant contends that while the applicant failed to file the application during the original legalization period, he did attempt to file the application during that period. Counsel also contends that the director's denial based on the applicant's failure to file the application during the legalization period violates the CSS/Newman Settlement Agreements and further asserts that the director failed to notify the applicant of his right to seek review of such denial by a Special Master. Additionally, counsel claims that the director has erroneously concluded that the evidence submitted was fraudulent. The applicant, according to counsel, has submitted sufficient credible evidence to establish his continuous residence in the United States since before January 1, 1982 and 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)(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.

As noted above, the director denied the application, finding that the applicant failed to file the application for temporary resident status during the original legalization period. On appeal, counsel contends that the director has violated the CSS/Newman Settlement Agreements when she did not notify the applicant of his right to seek review of such denial by a Special Master. Under the CSS/Newman Settlement Agreements, if the director denies the application solely because the applicant is determined to be a non-class member, the AAO shall have no jurisdiction over the denial of the application. Further, the denial notice shall explain the reason for the denial of the application for class membership and notify the applicant of his or her right to seek review of such denial by a Special Master. *See* CSS Settlement Agreement paragraph 8 at page 5; Newman Settlement Agreement paragraph 8 at page 7.

In this case, the director looked at all the documents submitted and adjudicated the application on its merits, thereby treating the applicant as a class member. The appeal is properly before the AAO and not the Special Master.

The application may not be approved because the applicant has failed to submit sufficient credible evidence to prove that he entered the United States before January 1, 1982 and has thereafter resided continuously in the United States until he or his parent attempted to file the application for temporary resident status.

To show that he has resided continuously in the United States throughout the requisite period, the applicant submitted three envelopes with stamps and postmarks and three affidavits. The director determined that the stamps and postmarks were both fraudulent and not credible. According to the director, the postmarks were illegible. Additionally, the director noted that one of the stamps affixed on the envelopes was originally issued in 1983, but the applicant claimed to have received this mail in 1981. The AAO finds that the date of the postmarks cannot be discerned and agrees with the director that the envelopes with the stamps and postmarks are not probative as evidence of the applicant's residence in the United States during the requisite period.

Similarly, the three affidavits lack probative value because they do not contain specific detail about the applicant's life and activities in the United States during the requisite period. The record shows that the applicant entered the United States in 1981, when he was nine years old. None of the affiants describes with any detail what the applicant did with his time, his activities, friendships, interaction with the community or other particulars of his residence in the United States during the requisite period. None states with specificity the events and circumstances of how he or she first met the applicant in the United States or how he or she dates his or her acquaintance with the applicant. Simply stating that the applicant lived continuously in the United States for a period of time without providing any detail about the events and circumstances of the applicant's life in the United States during the requisite period does not establish the reliability of the assertions and does not establish his continuous residence in the United States since before January 1, 1982.

The lack of detail in the affidavits and the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period 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 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.