

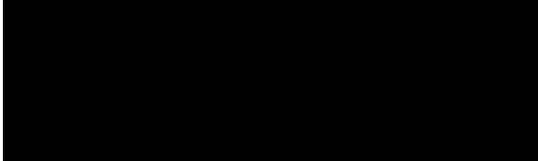
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



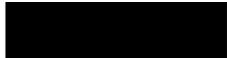
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FILE:



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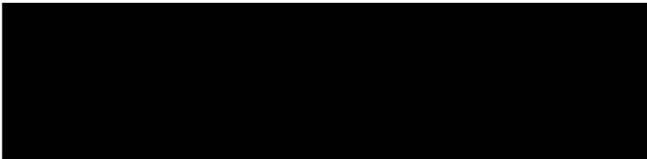
MSC 06 095 11841

IN RE: Applicant:



APPLICATION: Application for Temporary Resident Status under 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.

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) on 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) on February 17, 2004 (CSS/Newman Settlement Agreements), was denied by the director in Orlando, Florida. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application on the grounds that the applicant failed to establish that she resided continuously in the United States in an unlawful status from before January 1, 1982, and that she was continuously physically present in the United States from November 6, 1986, through the date of attempted filing during the original one-year application period for legalization that ended on May 4, 1988.

On appeal counsel asserts that the director's decision was arbitrary and capricious.

An applicant for temporary resident status under section 245A of the Immigration and Nationality Act (the Act) must establish his or her entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status from before January 1, 1982 through the date the application is filed. *See* section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2). The applicant must also establish his or her continuous physical presence in the United States since November 6, 1986. *See* 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. *See* 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 the regulation at 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 from May 5, 1987 to May 4, 1988. *See* CSS Settlement Agreement, paragraph 11 at page 6; Newman Settlement Agreement, paragraph 11 at page 10.

An applicant for temporary resident status has the burden to establish 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).

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 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.

The regulations provide an illustrative list of documents – which includes affidavits and “any other relevant document” – that an applicant may submit as evidence of continuous residence in the United States during the requisite period under section 245A of the Act. *See* 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The applicant, a native of Brazil who claims to have lived in the United States since 1981, filed her application for temporary resident status under section 245A of the Act (Form I-687), together with a Form I-687 Supplement, CSS/Newman (LULAC) Class Membership Worksheet, on January 3, 2006. As evidence of her residence and physical presence in the United States during the 1980s, the applicant subsequently submitted the following document:

An affidavit by [REDACTED] a resident of Maitland, Florida, dated September 7, 2006, stating that she met the applicant in 1981 “because she delivered yellow books” and “also provided cleaning services at my house” from 1981 to 1985.

On June 20, 2007, the director issued a Notice of Intent to Deny, indicating that the evidence of record did not establish the applicant’s continuous residence and continuous physical presence in the United States during the requisite periods under the Act. The applicant was given 33 days to submit additional evidence.

The applicant responded by letter on July 20, 2007, reiterating her claim that she came to the United States in 1981, resided in the country uninterrupted until 1986, made a one-month visit to Brazil in that year, and then returned to the United States. The applicant indicated that she has no documentary evidence of her residence in the United States during the 1980s beyond the affidavit previously submitted by [REDACTED].

On July 25, 2007, the director issued a Notice of Decision denying the application. The director reviewed the evidence of record and determined that it failed to establish the applicant’s continuous residence and continuous physical presence in the United States during the requisite periods to qualify for temporary resident status under the Act.

The applicant filed an appeal (Form I-694) on July 30, 2007. On the appeal form counsel asserted that the director's decision was arbitrary and capricious and based on erroneous premises. Counsel stated that a brief would be submitted within 30 days, but the record does not show that any such brief was received.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The salient issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that she resided continuously in the United States in an unlawful status from before January 1, 1982 through the date she attempted to file a Form I-687 during the original one-year application period for legalization that ended on May 4, 1988. The AAO determines that she has not.

The applicant has submitted no contemporary documentation from the 1980s demonstrating that she resided in the United States during the years 1981-1988. For someone claiming to have lived and worked in this country continuously since 1981, it is noteworthy that she is unable to produce a solitary document dating from that decade.

The only evidence of the applicant's residence in the United States during the 1980s is the aforementioned affidavit by [REDACTED] in 2006. The affidavit is a minimalist document with little personal input by the affiant. Considering how long she claims to have known the applicant, it is remarkable how little information [REDACTED] provides. She is vague about how and when she met the applicant, indicating that it was "back in 1981" when "she delivered yellow books," without further explanation about the date and circumstances. While indicating that the applicant cleaned her house until 1985, [REDACTED] offers no documentary corroboration and does not indicate whether she maintained any sort of contact with the applicant after 1985. [REDACTED] provides no further details about the applicant's life in the United States during the 1980s, such as where she lived or where she may have worked after 1985. Nor is the affidavit accompanied by any documentary evidence – such as photographs or letters – of [REDACTED] personal relationship with the applicant in the United States during the 1980s. In view of these substantive shortcomings, the affidavit has little probative value. It is not persuasive evidence of the applicant's continuous unlawful residence in the United States during the years 1981-1988.

Based on the foregoing analysis, the AAO determines that the applicant has failed to establish that she resided continuously in the United States in an unlawful status from before January 1, 1982 through the date she attempted to file a Form I-687 during the original one-year application

period for legalization that ended on May 4, 1988. Accordingly, the applicant is ineligible for temporary resident status under section 245A of the Act.

The appeal will be dismissed, and the application denied.

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