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Washington, DC 20529-2090



**U.S. Citizenship  
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**JAN 28 2009**

MSC-06-091-14707

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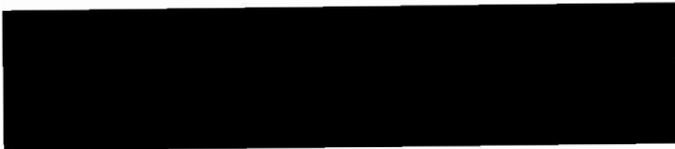
Applicant:



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, Boston 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 Act, and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet. The director denied the application after determining that the applicant had not established by a preponderance of the evidence that he had continuously resided or had been continuously physically present in the United States for the duration of the requisite period. The director noted that the applicant testified under oath during his interview with immigration officials on February 13, 2007, that he entered the United States in 1981 and remained in the country until 1983, at which time he traveled to Brazil where he remained for 1 year before returning to the United States in 1984. The director denied the application, finding that the applicant had not met his burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, the applicant asserts that the director's actions in denying the application was an abuse of discretion, that the director used the wrong evidentiary standard in reviewing the evidence, and that the discrediting of the evidence by the director was inappropriate. The applicant further asserts that there is no material misrepresentation in either the applicant's testimony or the evidence he submitted. The applicant states that the affidavits submitted are credible and amenable to verification and that the record contains sufficient documentation to establish the applicant's eligibility for temporary resident 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 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. See 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).

An alien shall be regarded as having resided continuously in the United States if at the time of filing an application for temporary resident status, no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, through the date the application is filed, unless the alien can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the alien was maintaining residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.15(c)(1).

If the applicant's absence exceeded the 45-day period allowed for a single absence, it must be determined if the untimely return of the applicant to the United States was due to an "emergent reason." Although this term is not defined in the regulations, *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), holds that emergent means "coming unexpectedly into being."

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 December 29, 2005.

During his interview with immigration officers on February 13, 2007, the applicant stated under oath that he entered the United States in 1981, left for Brazil in 1983, and returned to the United States in 1984, one year later.

The applicant submitted the following attestations:

- A declaration from [REDACTED] in which he stated that he is the pastor of World Revival Church, Assembly of God, located in Stoughton, Massachusetts, and that he has known the applicant in his church since October of 1981. The declarant also stated that the applicant attended church regularly and has become a member. He further stated that the applicant told him that he entered the United States, by traveling across the Mexican border, in October of 1981. This statement is inconsistent with the applicant's statements on his I-687 application, at part #31 where he was asked to list all of his affiliations and associations with churches, religious groups and/or community organizations, he did not state any. In addition, the declaration does not conform to regulatory standards for attestations by churches at 8 C.F.R. § 245a.2(d)(3)(v). Specifically, the declarant fails to specify the exact dates of the applicant's membership, and he fails to state the address where the applicant resided during the alleged membership. Nor does the declarant statement establish the origin of the information being attested to. It is also noted that there is no evidence to demonstrate that the declarant had first-hand knowledge of the applicant's entry into the United States or his whereabouts during the requisite period. Because this letter does not conform to regulatory standards, and because it conflicts with other evidence in the record, it can be accorded little weight in establishing the applicant's residence in the United States during the requisite period.
- A declaration from [REDACTED] in which he stated that he met the applicant sometime in 1981 at the church where his brother, [REDACTED] was pastor. The declarant also stated that the applicant confided in him that he crossed the Mexican border into the United States sometime in 1981. The declarant stated that he would see the applicant at the Assembly of God Church nearly every week and that they would talk with each other every now and again by phone. Here, the declarant fails to demonstrate that his statement concerning the applicant's entry into the United States was based upon his first-hand knowledge of the applicant's whereabouts or the circumstances of his

residency. The declarant fails to specify the applicant's place of residence during the requisite period. There is nothing in the record to show the applicant's affiliation or association with any church or religious group in the United States.

- A letter from [REDACTED] in which he stated that he has known the applicant since 2003. Because 2003 is subsequent to the requisite time period, it is irrelevant to the determination of the applicant's eligibility for the immigration benefit sought.

In denying the application the director noted that the applicant had been absent for one year during the requisite period.

On appeal, the applicant reasserts his claim of eligibility for temporary residence status. The applicant does not submit any new evidence.

The applicant has failed to provide an explanation for the inconsistencies found in the record of proceeding relating to his religious affiliations or associations in the United States. 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. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

In the instant case, the applicant has failed to provide sufficient, probative evidence to establish his continuous unlawful residence in the United States since prior to January 1, 1982, and throughout the requisite period. He has failed to overcome the issues raised by the director. There is insufficient evidence in the record of proceeding to demonstrate the reliability of the declarations submitted. The declaration from [REDACTED] is inconsistent with statements made by the applicant and it does not meet the regulatory criteria for such submissions. The applicant fails to address the issue concerning his absence from the United States for one year in 1983.

Although the applicant claims to have resided in the United States since he was 14 years old, he provided neither school records nor medical or immunization records to substantiate such claim. He also failed to provide any independent documentary evidence from or about any responsible adult or guardian to indicate the circumstances under which he survived in the United States during his childhood and throughout the requisite period.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, and the inconsistencies in the evidence discussed above seriously detracts from the credibility of this 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 applicant's absence from the United States for more than 45 days and in excess of 180 days, and his reliance

upon documents that do not conform to regulatory standards and are lacking in probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States for the requisite period 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.