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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS2090  
Washington, DC 20529-2090



U.S. Citizenship  
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Services

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FILE:



Office: LOS ANGELES

Date:

**JUL 02 2009**

MSC 05 244 14820

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.

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, Los Angeles. 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 denied the application finding that the applicant had not established by a preponderance of the evidence that he resided continuously in the United States in an unlawful status prior to January 1, 1982 and through the duration of the requisite period.

On appeal, the applicant states that the director failed to issue a notice of intent to deny. On the Form I-290B, the applicant indicated that a written brief would be submitted within 30 days. To date, this office has no record that any further evidence or brief was received with regard to this appeal. Accordingly, a decision will be rendered based on the evidence of record.

The applicant faults the director for failing to issue a notice of intent to deny (NOID). However, according to the settlement agreements, the director shall issue a NOID before denying an application for class membership. Here, the director adjudicated the Form I-687 application on the merits. As a result, the director is found not to have denied the application for class membership. Therefore, the director was not required to issue a NOID prior to issuing the final decision in this case.

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. The documentation that the applicant submits in support of his claim to have arrived in the United States before January 1, 1982 and lived in an unlawful status during the requisite period consists of affidavits of relationship written by family members and friends. The AAO will consider all of the evidence relevant to the requisite period to determine the applicant’s eligibility.

The United States Citizenship and Immigration Services (USCIS) adjudication officer’s notes reveal that during the applicant’s Form I-687 application interview, the applicant claims to have first entered the United States in October 1981 without inspection.

The applicant submitted several declarations from family members and friends to establish his initial entry and residence in the United States during the requisite periods. In his declaration, the applicant’s father, [REDACTED] states that the applicant entered the United States illegally through San Ysidro prior to January 1982 with him and his oldest son, [REDACTED]. The applicant’s uncle,

██████████ claims in his declaration that he knows the applicant entered the United States prior to January 1982 because the applicant came with him, his father and brother. However, the applicant's brother, ██████████ claims he entered the United States illegally in 1977 and does not claim to have entered with the aforementioned relatives. The declarants mention the names of different social events they attended with the applicant such as reunions, birthday parties, Christmas, and New Years but do not give any details about these events. The declarants provide no other information about the applicant.

In his declaration, ██████████ states that he resides in Mexico. He claims that he first met the applicant in February 1982 in Los Angeles, California, and knows that the applicant entered the United States illegally through San Ysidro, California, prior to 1982 because he spoke to the applicant and his father about it. Therefore, the declarant's knowledge of the applicant's entry into the United States in October 1981 is based on what the applicant told him rather than his personal knowledge. ██████████ and ██████████ also claim in their declarations to have met the applicant in 1982. The declarants provide no other information about the applicant. Therefore, these declarants are unable to personally attest to the applicant's entry into the United States before January 1, 1982 and his continuous residence during the requisite period.

██████████ states in his declaration that he entered the United States illegally in June 1981. He claims that he met the applicant in 1981 in Los Angeles, California, while asking his father for some work and knows that the applicant resided continuously in the United States during the requisite period. ██████████ and ██████████ declare that they met the applicant in 1981 and know that the applicant entered the United States prior to January 1982 because they met him in 1981 and would see him frequently when he accompanied his father to cut grass. None of the declarants are specific as to their knowledge concerning the applicant's continuous residence in the United States. ██████████ claims that she would see the applicant during fiestas and family reunions, however, she does not explain in detail the circumstances surrounding these social occasions. The declarations provide no other information about the applicant.

The inconsistencies in the declarations provided by the applicant are material to the applicant's claim in that they have a direct bearing on the applicant's initial entry and continuous residence in the United States during the requisite period. No evidence of record resolves these inconsistencies. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. 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*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Upon review, the declarations do not include sufficient detailed information about the claimed relationship spanning over 27 years and the applicant's continuous residency in the United States since October 1981. For instance, none of the declarants supplies any details about the applicant's

life, such as, knowledge about his education or employment. The declarants also fail to indicate any other details that would lend credence to their claimed acquaintance with the applicant and the applicant's residence in the United States during the requisite period. The declarations have not confirmed the applicant's residency in the United States prior to January 1, 1982 and throughout the requisite period.

The declarations do not 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 declarations. 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. The declarations do not contain sufficient detail to establish the reliability of their assertions. Therefore, they have minimal probative value in supporting the applicant's claim that he resided in the United States for the entire requisite period.

Considering all the evidence of record, the AAO finds that the applicant has not established that he resided in the United States for the requisite period. Given the lack of detail in the declarations, and the inconsistencies regarding the applicant's initial entry and continuous residence in the United States, 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.