

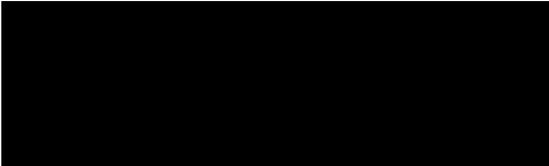
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
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FILE: [REDACTED]  
MSC-05 236 16668

Office: LOS ANGELES

Date: **JUL 23 2009**

IN RE: Applicant: [REDACTED]

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.

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 in Los Angeles, California. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a native of Mexico who claims to have lived in the United States since June 1981, 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 on May 24, 2005. The director denied the application, finding 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 counsel asserts that the director did not properly evaluate the documentation submitted by the applicant in support of his application. In counsel's view, the evidence of record is sufficient to establish that the applicant meets the continuous residence requirement for the duration of 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 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. 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, 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).

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. See 8 C.F.R. § 245a.2(d)(6). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

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 or petitioner 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.

The issue in this proceeding is whether the applicant (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 record reflects that the applicant, who was born on October 10, 1966, was about 15 years old at the time of his entry into the United States. As evidence of his residence in the United States during the requisite period, the applicant submitted the following documentation:

- A copy of the applicant's student identity card from Compton Unified School District for the years 1985-1986, and 1986-1987.  
A copy of California identity card issued to the applicant with an issue date of March 13, 1986.

- Copies of W-2 Wage and Tax Statements for the years 1986 and 1987.
- Seven photographs which the applicant indicated were taken in the United States in 1981.
- Letters from three businesses who claim to have employed the applicant at various times during the 1980s.
- A series of letters and affidavits from individuals who claim to have rented an apartment to or otherwise have known the applicant in the United States during the 1980s.

The AAO has reviewed each document in its entirety to determine the applicant's eligibility.

The AAO determines that the student identity records from Compton Unified School District in California for the years 1985-1987, the copy of the State of California identity card issued to the applicant in 1986, as well as copies of W-2 Wage and Tax Statements for 1986 and 1987, are credible evidence that the applicant resided in the United States from 1985 onwards through the requisite period. The AAO will focus its analysis on the documentation submitted by the applicant in support of his continuous unlawful residence in the United States from before January 1, 1982 through 1985.

The letters from [REDACTED], owner of Atlas Carburetor stating that the applicant was employed from November 1981 to August 1985, [REDACTED], supervisor at McDonalds in Maywood, California, stating that the applicant was employed from May 1986 to December 1987, and [REDACTED] stating that the applicant was employed from February 1988 to 1990, do not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because none of the authors provided the applicant's address during any of the periods of employment, did not indicate whether the information was taken from company records, and did not indicate whether such records are available for review. The letters are not supplemented by any earnings statements, pay stubs, or tax records demonstrating that the applicant was actually employed during any of the years claimed. Finally, the original letters are not in the file for proper verification. Thus, the employment letters have limited probative value. They are not persuasive evidence that the applicant resided continuously in the United States from before January 1, 1982 through the date of filing the application.

The photographs – which the applicant asserts were taken in the United States in 1981 – do not appear to be genuine. The photographs bear a processing date of August 1981; however, the applicant stated that he first entered the United States in November 1981. Therefore, it is highly likely that the photographs were taken in the United States about three months before the applicant entered the country. Thus the photographs have no probative value as evidence of the applicant's residence in the United States during the statutory period.

The notarized letters and affidavits in the record from individuals who claim to have rented an apartment to, or otherwise known the applicant during the 1980s, all have minimalist or fill-in-the-blank formats. Although some of the notarized letters and affidavits provided some basic

information such as the address claimed by the applicant during the 1980s, however, considering the length of time they claim to have known the applicant – in most cases since 1981 – the authors provided very few details about the applicant’s life in the United States, and the nature and extent of their interactions with him over the years. The letters and affidavits are not accompanied by any documentary evidence of the authors’ personal relationships with the applicant in the United States during the 1980s. In view of these substantive shortcomings, the AAO finds that the notarized letters and affidavits have little probative value. They are not persuasive evidence of the applicant’s continuous unlawful residence in the United States from before January 1, 1982.

As discussed above, the applicant has not submitted sufficient credible evidence to establish that he meets the continuous residence requirement for the duration of the requisite period. Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that he is eligible for the benefit sought.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that she 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.