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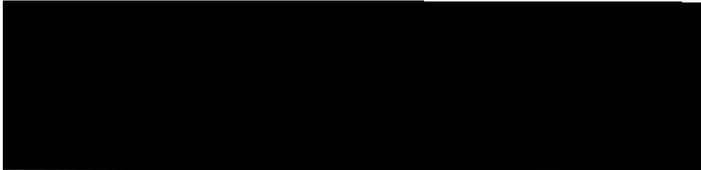
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



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and Immigration
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FILE:

MSC 05 223 10008

Office: NEWARK

Date:

JUN 25 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:

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.

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, Newark. 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, and a Form I-687 Supplement, CSS/Newman (LULAC) Class Membership Worksheet. The director denied the application because the applicant did not establish that he continuously resided in the United States for the duration of the requisite period. In so finding, the director determined that none of the applicant's affiants claimed that they had known the applicant prior to the beginning of the statutorily period. The director also found that the applicant was issued a United States nonimmigrant visa in Rio De Janeiro on July 8, 1987 and that the first time that it was used to enter the United States was on May 7, 1989, and therefore he could not have attempted to file for legalization in January 1988 as he had stated at his interview.

filed a Form G-28, Notice of Entry of Appearance as Attorney or Representative, with the applicant's consent on May 11, 2005. On May 18, 2007, he was no longer allowed to practice law before the Executive Office for Immigration Review and the Department of Homeland Security because of an expulsion. Accordingly, the applicant will be considered self-represented in this proceeding.

On appeal, the applicant states he is eligible for the benefit sought and he should be granted his green card. He submits additional documentation for consideration.

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)(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) 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).

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 the evidence for relevance, probative value, and credibility, within the context of the totality of the evidence, to determine whether the facts to be proven are 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, 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.

The pertinent evidence in the record is described below.

1. Notarized statements from [REDACTED] and [REDACTED] who state they know the applicant has resided in the United States since 1982.
2. An Affidavit of Witness from [REDACTED] who states he knows the applicant has resided in the United States since 1982.
3. A notarized statement from [REDACTED] who states he knows the applicant has resided in the United States since 1983.
4. Notarized statement from [REDACTED] and [REDACTED] who state they know the applicant has resided in the United States since 1988.
5. The applicant’s checking deposit slip from First City Bank in Farmers Branch, Texas showing he opened his account and made his first deposit on September 6, 1985.
6. The applicant’s checking deposit slip dated September 10, 1985 from First City Bank in Farmers Branch, Texas.
7. Checks written by the applicant from his account with First City Bank in Farmers Branch, Texas, dated September 10, September 17 and September 23, 1985.

8. An envelope postmarked October 2, 1985 from Farmers Branch in Houston, Texas, addressed to the applicant in Dallas, Texas.
9. The applicant's receipt from Central Transfer & Storage Co. dated October 17, 1985.
10. A U. S. Postal Service Form 2862, Return Receipt, showing an article of mail sent by the applicant from Texas was received abroad on November 7, 1985.
11. The applicant's pay slips from Environmental Cleaning Services, Inc. dated June 2, 1986, July 28, 1986 and October 20, 1986.
12. The applicant's nonimmigrant visa issued to him by a Consular Official in Rio De Janeiro on July 8, 1987 showing that he was admitted to this country using the visa on May 7, 1989.

The affiants above (Items # 1 through # 4 above) claim to have known the applicant for a substantial length of time, the earliest since 1982. However, their statements are not accompanied by any documentary evidence such as photographs, letters or other documents establishing the affiants' personal relationship with the applicant in the United States after their initial meeting. In view of these substantive shortcomings, the AAO finds that the statements have little probative value. Also, none of the affiants attest to having known the applicant was residing in this country since before January 1, 1982. These statements are not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through the date the applicant attempted to file a Form I-687 or was caused not to timely file during the original filing period from May 5, 1987 ending on May 4, 1988. Based on the applicant's checking activity, his receipt, his U. S. Postal Service Form 2862 and his pay slips (Items # 5 through 11), the AAO accepts that he was present in the United States for a part of the requisite period.

Also, as noted by the director, the record reflects applicant was issued a B-2 nonimmigrant visitor visa at the American Embassy in Rio De Janeiro, Brazil, on July 8, 1987. On his Form I-687, the applicant stated that left the United States in June 1987 and returned in July 1987. However, the record establishes that his first entry into this country after attaining his nonimmigrant visa abroad was on May 7, 1989. As determined by the director, the applicant could not have attempted to file for legalization in January 1988 as he had stated at his interview. Continuous unlawful residence is broken if an absence from the United States is more than 45 days on any one trip unless return could not be accomplished due to emergent reasons. 8 C.F.R. § 245a.2(h)(1)(i). "Emergent reasons" has been defined as "coming unexpectedly into being." *Matter of C*, 19 I&N Dec. 808 (Comm. 1988). Even had the applicant filed for legalization as he indicated at his interview, his absence from the United States from July 8, 1987 to January 1988 would have represented a period of more than 45 days, clearly breaking any period of continuous residence he may have established.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate entry into the United States prior to January 1, 1982, and continuous residence during the requisite period. The applicant's asserted residential and absence histories on his Form I-687 are accompanied by inconsistent evidence.

The evidence must be evaluated not by the quantity of evidence alone but by its quality. 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 its amenability to verification. Given the absence of credible supporting documentation, the applicant has failed to meet his burden of proof and failed to establish continuous residence in an unlawful status in the United States during the requisite period. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act. The application was correctly denied on this basis, which has not been overcome on appeal. Consequently, the director's decision to deny the application is affirmed.

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