

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY



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
and Immigration
Services

MAY 18 2009

FILE: [REDACTED]
MSC-05-292-14550

Office: LOS ANGELES

Date:

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: 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, and the director rejected a subsequent appeal. The Administrative Appeals Office (AAO) reopens the proceeding *sua sponte* and withdraws the previous decision. The AAO will consider the 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 after determining 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. The director noted that although the applicant testified under oath that he was only absent from the United States from July to August of 1987, he submitted school records that showed that he attended college in the Philippines from 1983 to 1989. 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.

The director denied the Form I-687 application on May 4, 2007. At that time, the director instructed the applicant of his right to file an appeal with the AAO. The director noted that the applicant's appeal was filed on June 10, 2007, which is more than 30 days subsequent to the denial. The record of proceeding shows that the applicant's Form I-694, Notice of Appeal of Decision was initially received by United States Citizenship and Immigration Services (USCIS) on June 5, 2007 and that it was returned to the applicant for signature. In response to the denial, the applicant asserts that he timely filed the appeal and inadvertently signed his appellate brief only. The applicant submits as evidence a photocopy of the United States Postal Service return receipt. It is also noted that the applicant's Form I-694 is date stamped received on June 5, 2007. It appears from the record that the applicant did file his Form I-694 timely, and therefore, the AAO withdraws the director's previous decision and the evidence will be reviewed by the AAO to determine its relevance to the applicant's claimed eligibility for temporary resident status.

On appeal, the applicant asserts that he was enrolled in a distance learning program at the Mapua Institute of Technology in Manila, Philippines, and that he was not actually living in the Philippines during the requisite period. The applicant does not submit any evidence on appeal.

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. *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).

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 since before

January 1, 1982, and throughout the requisite period. Here, the applicant has failed to meet this burden.

The applicant submitted copies of his Bachelor of Science Degree dated November 21, 1989 from Mapua Institute of Technology located in Manila, Philippines. He also submitted copies of his college transcripts from the Institute in which it is indicated that the applicant attended the college from 1983 to 1988, and graduated in 1989. Although the applicant claims on appeal that he participated in the college's distance learning program, he has failed to submit evidence to substantiate his claim. It is noted that the transcript from the Institute in the Philippines not only lists the applicant's home address as being in Manila, Philippines but it also shows that the applicant attended primary school, intermediate school, and high school at Don Bosco Technical Institute located in the Philippines, and that he took the NCEE college entrance exam in the Philippines in 1983. It is further noted that the applicant completed and received credit for courses including: gymnastics and physical fitness exercises, team sports, group and lead-up games, and citizen military training which could not have been taken via distance learning as alleged by the applicant. These inconsistencies cast doubt on the applicant's proof. 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).

The applicant submitted affidavits from [REDACTED] and [REDACTED] who stated that the applicant resided at [REDACTED] in Azusa, California from June 1981 to January 1988. They also stated that the applicant is their nephew and that they have sent the applicant correspondence over the years to the above noted address. Although the affiants appear to state that they have known the applicant to reside in the United States since June of 1981, their statements do not supply enough detail to lend credibility to a 24 plus years relationship with the applicant. For instance, the affiants do not indicate how they date their initial meeting with the applicant, how frequently they had contact with the applicant, or how they had personal knowledge of the applicant's presence in the United States. Further, the affiants fail to establish first-hand knowledge regarding the applicant's place of residence during the requisite period. Given these deficiencies, these affidavits have minimal probative value in supporting the applicant's claims that he entered the United States prior to January 1, 1982, and resided in the United States throughout the requisite period.

In the instant case, the applicant has failed to provide sufficient credible and probative evidence to establish his continuous unlawful residence in the United States since prior to January 1, 1982, and during the requisite period. He has failed to overcome the director's basis for denial. He has also failed to provide any independent documentary evidence from or about any responsible adult or guardian sufficient to indicate the circumstances under which he lived 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 noted 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 many inconsistencies, it is concluded that the applicant 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.