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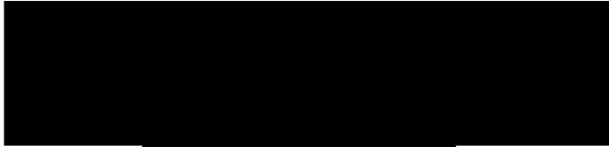
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE:



Office: DALLAS

Date:

OCT 16 2009

MSC-04 359 11193

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:



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.

Perry J. Rhew
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 Dallas, Texas. 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 before January 1, 1982, 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 September 23, 2004. 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 the applicant asserts that the director did not properly evaluate the documentation he submitted in support of his application. Specifically, the applicant asserts that the director did not give due weight to a copy of his Personal Immunization Record showing that he was administered various childhood immunizations starting in November 1981 through October 1995. In the applicant's view, the evidence in the record is sufficient to establish that he meets the continuous residence requirement for legalization.

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 documentation that the applicant submits in support of his claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period, consists of the following:

- A photocopy of a Personal Immunization Record Certificate from Tarrant County Public Health Department, Immunization Outreach Teams, Fort Worth, Texas, dated December 25, 1994.

A series of affidavits from individuals who claim to have known the applicant resided in the United States during the 1980s.

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

The record reflects that the applicant, who was born on December 4, 1972, and who claims that he traveled to the United States with his mother in 1981 and has continuously resided in the country since 1981, was around 9 years old when he allegedly entered the country. However, the applicant does not submit any school or medical records other than the immunization record, nor does he provide an explanation as to why he is unable to provide his school or other medical records. In addition, the applicant does not provide any supporting documentation to establish that he entered the United States in 1981, does not provide any credible evidence of how he was able to sustain himself or make contributions towards rent or household expenses at such a young age. In 1981 the applicant was 9 years old, and therefore, would have had to have been provided for and cared for by an adult.

As evidence of his entry and continuous residence in the United States from before January 1, 1982, the applicant submitted a photocopy of a Personal Immunization Record Certificate (PIRC) from Tarrant County Public Health Department, Immunization Outreach Teams, dated October 25, 1994. The document, which was validated by a doctor from the Immunization Outreach Clinic in Fort Worth, Texas, listed a summary of all the immunizations administered to the applicant from November 1981 to October 1995, but does not specify where they were administered or who administered them to the applicant. The document does not establish that the immunizations were administered to the applicant by Tarrant County Public Health Department or by any other clinic in the United States during the period indicated in the summary. Rather, the document suggests that Tarrant County Public Health Department must have reviewed the applicant's actual immunization record to ensure that the applicant satisfied the immunization requirements for registering and attending school in Texas. The original PIRC is not in the record for proper verification as well as the original record from which the department compiled the summary of the immunizations administered to the applicant from 1981 to 1995.

The director repeatedly requested the applicant to submit the original records for proper verification but he failed to do so, thereby casting some doubt on the validity and authenticity of the immunization record. For the reasons discussed above, the AAO determines that the photocopied PIRC has little probative value as credible evidence of the applicant's continuous residence in the United States from before January 1, 1982 through the requisite period.

The affidavits in the record from individuals who claim to have known the applicant in the United States during the 1980s have minimalist or fill-in-the-blank formats with very little input by the affiants. Although the affiants claim to have known the applicant during the early 1980s, the affiants provided very few details about the applicant's life in the United States such as where the applicant lived, who he lived with, which schools he attended if any, and the nature

and extent of their interactions with the applicant over the years. The affidavits are not accompanied by any documentation – such as photographs, letters or the like – of the affiants' personal relationships with the applicant in the United States during the 1980s. Furthermore, the affiants do not have personal knowledge of the events and circumstances of the applicant's entry and continuous residence in the United States during the requisite period. The affiants did not provide documents to establish their own identities and continuous residence in the United States during the requisite period. For all the reasons stated above, the affidavits have little probative value. They are not persuasive evidence that the applicant entered the United States before January 1, 1982 and resided continuously in the country through the date of filing the application.

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 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.