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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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**U.S. Citizenship
and Immigration
Services**

PUBLIC COPY



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FILE:



Office: BOSTON

Date:

SEP 08 2009

MSC-06 095 10886

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

The applicant, a native of Brazil who claims to have lived in the United States since November 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 January 13, 2006. 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 he has submitted sufficient credible evidence to establish that he meets the continuous residence requirement for legalization. The applicant requested a copy of the Record of Proceedings (ROP) and indicated that he would submit a brief or additional evidence within 30 days of receiving the ROP. The record reflects that the ROP request was processed on April 7, 2009. The record further reflects that the applicant has not submitted a brief or additional evidence as indicated. The AAO will consider the record as complete and will adjudicate the application based on the evidence in the record.

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 AAO notes that the applicant, who claims to have traveled to the United States with his cousin in 1981, was only 14 years old when he allegedly entered the United States in 1981. The applicant did not submit any credible documentation from his cousin or any competent adult to establish such entry. For someone claiming to have lived in the United States since 1981, it is noteworthy that the applicant is unable to produce a primary evidence of his residence in the

country during the following eight years through May 4, 1988. The applicant did not submit any school or medical records, which is reasonable to expect from a child of 14 in 1981. In addition, the applicant did not provide credible documentation as to 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 14 years old, and therefore, would have had to have been provided for and cared for by an adult.

The record includes a prescription slip from [REDACTED] dated November 23, 1981 addressed to the applicant at [REDACTED]. The prescription slip does not appear to be genuine because the document bears an incomplete and contradictory address of the applicant. While the prescription slip indicated the applicant's address as [REDACTED] (City and State not indicated), the applicant indicated his address on the Form I-687 he filed in 2006 as [REDACTED] Rockland, Massachusetts, from November 1981 to June 1986. Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Additionally, the prescription slip is not accompanied by any medical records or other notations from the doctor indicating the nature of the applicant's visit that resulted in the prescription. For the reasons discussed above, the prescription slip from [REDACTED] has little probative value. It is not persuasive evidence of the applicant's continuous residence in the country for the requisite period.

The record includes three photocopies of photographs showing the applicant and some of his friends which the applicant indicated were taken at home and at the church. The applicant indicated that the photograph of the baptism was taken at the church in 1987. None of the photographs bear official date stamps or other indications as to when or where they were taken. Assuming the AAO accepted that the baptism photograph was taken in 1987, there is no indication of where it was taken and even if it was taken in the United States in 1987, it will not establish that the applicant resided continuously in the United States during that time much less before January 1, 1982. Thus, the photographs have little probative value. They are not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through the requisite period.

Lastly, the record includes a letter from [REDACTED] dated December 26, 2005. [REDACTED] indicated that he is the pastor of the World Revival Church, Assembly of God in Woonsocket, Rhode Island, that the applicant is his brother, that the applicant is a member of the church in Somerville, Massachusetts since 1987, and that the applicant illegally entered the United States in 1981. The letter from [REDACTED] does not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(v), which specifies that attestations by religious and related organizations (A) identify the applicant by name, (B) be signed by an official (whose title is shown), (C) show inclusive dates of membership, (D) state the address where the applicant resided during the membership period, (E) include the organization seal impressed on the letter or the letterhead of the organization, (F) establish how the author knows the applicant, and (G) establish the origin of the information about the applicant. The letter did not specify the precise dates of membership, did not indicate where the applicant lived during the time of his

membership in the church or at any other time during the 1980s, did not indicate how and when he met the applicant, and whether his information about the applicant was based on personal knowledge, the church's records, or hearsay. Additionally, the letter is not prepared on the church's letterhead and [REDACTED] did not provide any documentation establishing his own identity and residence in the United States during the 1980s or that he is authorized by the church to write this letter on their behalf. Since the letter did not comply with sub-parts (B), (C), (D), (E), (F), and (G) of 8 C.F.R. § 245a.2(d)(3)(v), the AAO concludes that it has little probative value. The letter is not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through 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 she is eligible for the benefit sought.

Given the paucity of the evidence in the record, the AAO concludes that 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.