

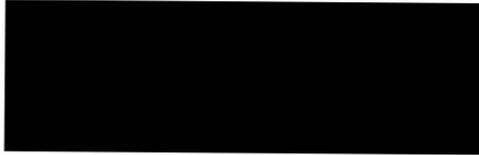
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, D.C. 20529-2090



U.S. Citizenship  
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FILE:   
MSC 06 074 10666

Office: NEW YORK

Date: **SEP 21 2009**

IN RE: Applicant: 

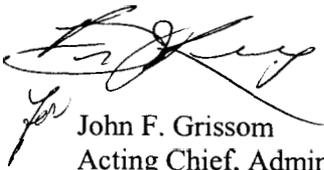
APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the  
Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, 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.



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, New York, New York, and 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 (Act), and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet. The director determined that the applicant had not established by a preponderance of the evidence that she had continuously resided in the United States in an unlawful status for the duration of the requisite period. The director denied the application, finding that the applicant had not met her burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, counsel requests that the application be reconsidered for humanitarian reasons. Counsel asserts the evidence submitted is sufficient to establish the applicant's continuous residence in the United States during the requisite period. Counsel provides copies of documents that were previously submitted in support of the 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)(1).

For purposes of establishing residence and presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the alien attempted to file a completed Form I-687 application and fee or was caused not to timely file, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. Paragraph 11, page 6 of the CSS Settlement Agreement and paragraph 11, page 10 of the Newman Settlement Agreement.

An alien applying for adjustment of status 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. See 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 including affidavits 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.* 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 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.

In an attempt to establish continuous unlawful residence in the United States since prior to January 1, 1982, the applicant submitted:

- An affidavit from [REDACTED] who indicated that she has known the applicant since 1987. The affiant indicated that she was a coworker of the applicant at private parties of the General Consul of the Republic of Argentina in New York.
- An affidavit from [REDACTED] who indicated that he has known the applicant since 1981. The affiant indicated that he met the applicant on different occasions while providing catering services to private houses. The affiant indicated that in 1987, he met the applicant regularly at the house of the General Consul of the Republic of Argentina in New York.
- Affidavits from [REDACTED] and [REDACTED] who indicated that they met the applicant in June 1981 and July 1982, respectively. Mr. [REDACTED] indicated that the applicant rented a room in his apartment at [REDACTED] New York. Mr. [REDACTED] indicated she met the applicant at a friend's party.
- Affidavits from [REDACTED] and [REDACTED] who indicated that they met the applicant in 1981 and December 1986, respectively. Ms. [REDACTED] attested to the applicant's moral character. Mr. [REDACTED] indicated that he met the applicant at a Christmas party for a football team.

- Affidavits from [REDACTED] and [REDACTED], who indicated that he met the applicant on May 13, 1981 and 1982, respectively. [REDACTED] indicated that he played on a football team with the applicant's husband. [REDACTED] indicated that the applicant is a cherished friend of the family.
- An affidavit from [REDACTED] who attested to the applicant's residence at [REDACTED] New York since 1987. The affiant indicated that the applicant is one of her customers.
- An affidavit from [REDACTED] who indicated that he met the applicant in 1981 through her husband and attested to the applicant's moral character.
- A letter dated July 8, 1991, from counsel, who indicated that the applicant attended religious services at St. Bartholomew's rectory in Elmhurst, New Jersey since 1981.
- A letter dated August 7, 1991, from [REDACTED] Consul General of the Republic of Argentina, indicating that the applicant has been an employee of his household since November 1987.
- An affidavit from [REDACTED] who indicated that the applicant was a customer of her daughter and attested to the applicant's absence from the United States from September 20, 1987 to October 20, 1987.

On September 26, 2007, the director issued a Notice of Intent to Deny, which advised the applicant that at the time of her claimed arrival in 1981 she was 15 years of age; however, she failed to provide evidence of school or immunization records. The applicant was advised of contradicting information between her applications and supporting documents. Specifically, on her current Form I-687 application signed December 5, 2005, the applicant claimed residence at [REDACTED] New York since March 1981. However, on her initial Form I-687 application, the applicant claimed residence at [REDACTED] from December 1987 and Mr. [REDACTED] indicated the applicant resided in his apartment at [REDACTED]. The applicant was also advised that the affidavits from the remaining affiants did not contain sufficient objective evidence to which they could be compared to determine whether the attestations were credible, plausible, or internally consistent with the record.

Counsel, in response, asserted that the applicant has submitted sufficient documents, which were affidavits of circumstances from individuals who were able to testify to the applicant's residence and employment during the requisite period. Counsel asserted that the applicant entered the United States in 1981 without inspection and, therefore, has no evidence to substantiate her entry.

The director determined that the applicant had failed to submit credible evidence of an adult responsible for her care and financial support as she was a minor during a portion of the requisite period. The director concluded that the applicant had failed to provide sufficient credible evidence establishing her continuous residence in the United States since prior to January 1, 1982, and, therefore, denied the application on October 12, 2007.

The statements issued by counsel have been considered. However, the AAO does not view the documents discussed above as substantive enough to support a finding that the applicant entered the United States prior to January 1, 1982, and resided since that date through the date she attempted to file her application

Neither counsel nor the applicant has addressed the director's findings regarding the contradicting addresses claimed on her Form I-687 applications.

The letter from counsel has little evidentiary weight or probative value as it does not conform to the basic requirements specified in 8 C.F.R. § 245a.2(d)(3)(v). Most importantly, counsel does not explain the origin of the information to which he attests.

The affiants' statements do not provide detailed evidence establishing the details of their association or relationship, or detailed accounts of an ongoing association establishing a relationship under which the affiants could be reasonably expected to have personal knowledge of the applicant's residence, activities and whereabouts during the requisite period. To be considered probative, an affiant's affidavit must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. The affidavit must contain sufficient detail, generated by the asserted contact with the applicant, to establish that a relationship does in fact exist, how the relationship was established and sustained, and that the affiant does, by virtue of that relationship, have knowledge of the facts asserted. The affidavits from the affiants do not provide sufficient detail to establish that they had an ongoing relationship with the applicant that would permit them to know of the applicant's whereabouts and activities throughout the requisite period.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of her claim. Given the credibility issues arising from the documentation provided by the applicant, it is determined that the applicant has not met her burden of proof. The applicant has not established, by a preponderance of the evidence continuous residence in an unlawful status in the United States during the requisite period.

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

The AAO maintains plenary power to review each appeal on a de novo basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); see also, *Janka v. U.S. Dept. of Transp.*, NTSB, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's de novo authority has been long recognized by the federal courts. See, e.g. *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

On June 5, 2002, the applicant filed a Form I-485, Application for Status as a Permanent Resident, pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act.<sup>1</sup> Accompanying the Form I-485, is a Form G-325A, Biographic Information, signed June 2001. The applicant did not list any residence in the state of New York or employment with [REDACTED] on the Form G-325A. The applicant listed residence in the state of Florida. It is noted that no supporting documents were submitted with the LIFE application.

On her initial Form I-687 application, the applicant indicated that the purpose for her absence during 1987 was to get married and have her child. However, the applicant, on the Form G-325A, left the section regarding the date and place of marriage blank and the record does not contain the birth certificate of the applicant's child.

These inconsistencies further raise serious questions regarding the authenticity of the supporting documents submitted with the Form I-687 applications and tend to establish that the applicant utilized documents in a fraudulent manner in an attempt to support her claim of residence in New York during the requisite period. As such, the applicant has irreparably harmed her own credibility as well as the credibility of her claim of continuous residence in the United States for requisite period

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

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<sup>1</sup> In a letter dated May 7, 2004, the applicant requested that her LIFE application be closed.