

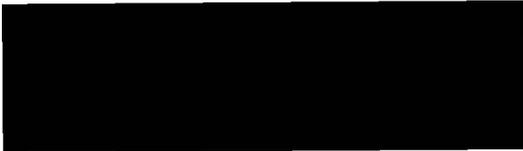
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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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Services

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FILE:



MSC 06 090 16200

Office: SEATTLE

Date: JAN 05 2010

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. The file has been returned to the National Benefits Center. 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. Grisson, 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, or *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, Seattle, Washington. A subsequent appeal was dismissed by the Chief, Administrative Appeals Office (AAO). The appeal is now being reopened *sua sponte*. The appeal will be dismissed.

The director determined that the applicant had not established that he resided in the United States in a continuous unlawful status from before January 1, 1982 through the date of attempted filing during the original one-year application period that ended on May 4, 1988. The director noted that the applicant submitted questionable documents, such as documents with altered dates, mail envelopes bearing postage stamps that had been issued several years after the postmark on those envelopes, and a medical note purportedly issued in May 1982 printed on a form that indicates that the form was last revised in October 1993.

On appeal, counsel for the applicant asserts that the applicant has submitted sufficient evidence to establish his eligibility for Temporary Adjustment of Status pursuant to Settlement Stipulation for Legalization under LIFE Act; and, that the director erred in failing to consider the applicant's Form I-690 waiver application on the ground that a fee was not submitted. Counsel submits additional evidence on appeal.

Counsel requests *sua sponte* reopening of this matter because the issue of the director's failure to consider the applicant's Form I-690 waiver application on the ground that a fee was not submitted, was not addressed by the AAO in its May 4, 2009 decision to dismiss the appeal. In her motion, counsel asserts that the director's denial of the I-687 application "explicitly relies on [the applicant's] supposed failure to pay the fee for his I-690 waiver application" because the waiver application was accompanied by the correct fee. Counsel submits, as proof of payment of the I-690 waiver application fee, a photocopy of a check, dated December 27, 2006, for \$95.00 from [REDACTED] written to "U.S. Department of Homeland Security." Given this proof of payment of the I-690 application fee, reference in the director's decision that the I-690 waiver application fee was not paid, is hereby withdrawn, and the director is instructed to continue processing the I-690 waiver application.

However, contrary to counsel's assertion, the director's decision to deny the I-687 application is not based "explicitly" on the issue of nonpayment of the I-690 waiver application fee. In the denial notice, the director clearly delineated the primary ground for denial, which was the applicant's failure to establish the requisite continuous residence. The director also identified deficiencies in the record, and noted that the applicant had failed to overcome the reasons for denial stated in the December 5, 2006 notice of intent to deny. Nevertheless, the AAO will reexamine the entire record

and render its decision without regard to the director's reference to the deficiency in the applicant's I-690 application.¹

An applicant for temporary resident status – under section 245A of the Immigration and Nationality Act (the Act) – 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. *See* 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. *See* 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. *See* 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)(1) 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.

¹ The director's reference to the I-690 application fee, is also deemed a harmless error from the standpoint of evaluating the proof provided in support of the applicant's claim of continuous residence in the United States since prior to January 1, 1982.

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 or petition.

Although the regulations provide an illustrative list of contemporaneous documents that an applicant may submit, the list also permits the submission of affidavits and any other relevant document. *See* 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant’s employment must: provide the applicant’s address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant’s duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

The applicant, a native of India who claims to have resided in the United States since November 1980, filed his application for temporary resident status under section 245A of the Act (Form I-687), together with a Form I-687 Supplement, CSS/Newman (LULAC) Class Membership Worksheet, on December 29, 2005.

In the Notice of Intent to Deny (NOID), dated December 5, 2006, the director stated that the applicant failed to submit sufficient evidence demonstrating his continuous unlawful residence in the United States during the requisite period. The director granted the applicant thirty (30) days to submit additional evidence.

In the Notice of Decision, dated January 24, 2007, the director denied the instant application based on the reasons stated in the NOID. The director noted that the applicant responded to the NOID, but failed to overcome the reasons for denial stated in the NOID. The director also noted that the applicant testified under oath at his interview on July 21, 2007, that he had submitted fraudulent documents with his Form I-485 application.

On appeal, counsel for the applicant asserts that the applicant has submitted sufficient evidence to establish his eligibility for Temporary Adjustment of Status pursuant to Settlement Stipulation for Legalization under LIFE Act. Counsel also states that the applicant was out of the country when his Form I-687 application was denied, and upon his return to the United States, he was detained and kept in custody; therefore, the applicant was unable to submit a response to the NOID.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he continuously resided in the United States in an unlawful status from before January 1, 1982 through the date he attempted to file a Form I-687 during the original one-year

application period that ended on May 4, 1988. After reviewing the entire record, the AAO determines that he has not.

Contrary to counsel's assertion, the applicant has submitted questionable documentation. For example, the applicant provided three (3) airmail envelopes addressed to the applicant in the United States, which are date-stamped in 1982 and 1984. Affixed to the envelopes are various postage stamps issued in India. These postage stamps, however, were issued in the years 2000 and 2001. Yet the applicant provided these stamped mail envelopes in support of his claim that he has resided in the United States since prior to January 1, 1982. Another example, the applicant submitted a medical note from [REDACTED], stating that the applicant had been seen at his office. The medical note, however, appears to have been altered to indicate a July 04, 1984 date, instead of July 04, 2001. In addition, the applicant submitted a Visit Verification form from Kaiser Permanente indicating that the applicant had been seen at the office on May 3, 1982, and stating that the applicant had been unable to work from May 1, 1982 through May 3, 1982, and that the applicant could return to full duties on May 4, 1982. The issue date of the form, however, indicates that the form had been printed in October 1993. Clearly, the applicant has submitted unreliable documents in an attempt to establish his continuous residence since prior to January 1, 1982. Given these glaring discrepancies in the applicant's documentation, it is questionable whether the evidence provided, including numerous affidavits and letters he has provided in support of his application, is genuine.

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 has failed to submit any objective evidence to explain or justify the discrepancies in his testimony and in the record. Therefore, the reliability of the remaining evidence offered by the applicant is suspect and it must be concluded that the applicant has failed to establish that he continuously resided in the United States in an unlawful status during the requisite period.

As stated previously, 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 amenability to verification. Given the applicant's reliance upon documents with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982, through May 4, 1988.

Based on the foregoing analysis of the evidence, the AAO concludes that the applicant has failed to establish his continuous unlawful residence in the United States throughout the requisite period. Thus, the record does not establish that the applicant entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from that date through the date he attempted to file a Form I-687 during the original one-year application period that ended on May 4, 1988. Accordingly, the applicant is ineligible for temporary resident status under section

245A(a)(2) the Act. The AAO, therefore, finds that there is no reason to disturb its May 4, 2009 decision to dismiss the appeal.

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