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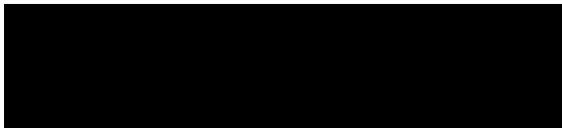
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

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FILE:



MSC 05 012 10825

Office: NEW YORK

Date:

**JAN 25 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. 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 cursive script that reads "Elizabeth McCormack".

Perry 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, New York. The decision 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 denied the application finding that the applicant had not provided credible evidence to establish that he entered the United States prior to January 1, 1982, and thereafter continuously resided in the United States in an unlawful status for the duration of the requisite period.

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 appeal, counsel states that the director gave a different reason for denying the applicant’s Form I-687 application than what was cited in the Notice of Intent to Deny (NOID). Counsel requests that the case be remanded so that the applicant can rebut the additional grounds for denial. The AAO notes that the applicant was notified of the director’s reasoning in the decision and had the opportunity to submit rebuttal evidence on appeal. The AAO declines to remand the case to allow the applicant to submit additional evidence.

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 245(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 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. 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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her 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).

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 submitted sufficient credible evidence to meet his burden of establishing that he (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 1, 1982 and lived in an unlawful status during the requisite period consists of two letters from different organizations and other evidence. The AAO will consider all of the evidence relevant to the requisite period to determine the applicant’s eligibility.

The United States Citizenship and Immigration Services (USCIS) adjudicating officer’s notes reveal that the applicant claimed he entered the United States at Miami in 1981 by ship and then took a bus to New York. The applicant claimed he was 16 years old when he arrived in the United States and he resided in Brooklyn, New York, from 1981 to 1988. The applicant claimed on his class membership

determination form that he first entered the United States without inspection at Miami, Florida, on August 15, 1981.

The remaining evidence consists of a letter from [REDACTED] general secretary of the [REDACTED] New York, New York, and the Islamic (spelled "Isimic on the letterhead) [REDACTED], New York, New York. The letter signed by [REDACTED] states that the applicant has been associated with the organization from February, 1982, to April, 1991. The letter states that the applicant attended the social activities and rendered his volunteer services among the Asian community. The letter from [REDACTED] states that the applicant has been associated with the organization from January, 1983 to March, 1991. The letter states that the applicant attended the mosque, rendered his volunteer services to the Asian and local Muslim community. The name of the person that signed this letter is illegible. The letters attest to the applicant's good moral character but are insufficient to establish the applicant's entry and continuous residence throughout the requisite period. The regulation at 8 C.F.R. § 245a.2(d)(3)(v) provides requirements for attestations made on behalf of an applicant by churches, unions, or other organizations. Attestations must (1) identify applicant by name; (2) be signed by an official (whose title is shown); (3) show inclusive dates of membership; (4) state the address where applicant resided during membership period; (5) include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; (6) establish how the author knows the applicant; and (7) establish the origin of the information being attested to. The letters do not contain most of the aforementioned requirements and will be given nominal weight.

This application cannot be approved for another reason. The AAO finds that the applicant disrupted his period of any continuous unlawful residence<sup>1</sup> in the United States during the statutory period of January 1, 1982 to May 4, 1988 and had not shown emergent reasons for the length of absence.

An applicant shall be regarded as having resided continuously in the United States if, at the time of filing the application for temporary resident status, no single absence from the United States has exceeded 45 days, and the aggregate of all absences has not exceeded 180 days between January 1, 1982, through the date the application is filed, unless the alien can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the alien was maintaining residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.1(c)(1)(i).

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<sup>1</sup> The regulation implementing the statutory requirement of "continuous unlawful residence" in the United States defines that term as no single absence from the United States exceeding 45 days and absences in the aggregate not exceeding 180 days. See, section 245A(a)(2)(A) of the Act, 8 U.S.C. § 1255(a)(2)(A) and 8 C.F.R. § 245a.1(c)(1)(i).

The USCIS adjudicating officer's notes reveal that the applicant departed the United States in February, 1986 for one month to visit family in Bangladesh. However, the applicant claimed on his Form I-687 application that he signed on October 4, 2004 that he was absent from the United States from March, 1983, to February, 1986, to visit his parents and friends in Bangladesh. Counsel states that the applicant had limited abilities to speak and write English which resulted in his friends, family and other individuals assisting him in completing his forms. Therefore, the inconsistencies are not intentional and should not be deemed to discredit the current application. However, as stated in the director's decision, neither counsel nor the applicant requested an interpreter at the beginning of the Form I-687 interview and the Form I-687 application was signed by the applicant. Absent an explanation or other evidence, the applicant has not established that he did not remain outside the United States for almost three years. No explanation and evidence was provided with the Form I-687 application and during the interview to show that the applicant's delayed reentry into the United States was due to emergent reasons. Therefore, the applicant has disrupted any period of continuous residence in the United States during the statutory period of January 1, 1982 to May 4, 1988 and has not shown emergent reasons for the length of the absence.

Upon review, the AAO finds that the applicant has not provided any evidence to establish that his absence from the United States for more than 45 days was due to an emergent circumstance. The applicant had a break in any continuous residence and is not eligible for status as a temporary resident. For this additional reason, the application may not be approved.

Therefore, based upon the foregoing, the applicant 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.

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