

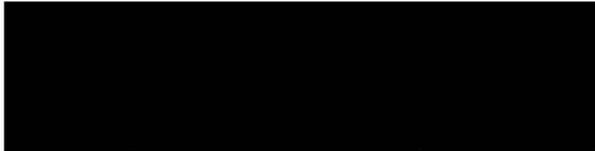


U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

L1



FILE: [REDACTED]
MSC 05 173 32041

Office: NEW YORK

Date: **JAN 29 2010**

IN RE: Applicant: [REDACTED]

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. 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.


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, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The regulation at 8 C.F.R. § 103.3(a)(1)(iii) states, in pertinent part:

(B) *Meaning of affected party.* For purposes of this section and §§ 103.4 and 103.5 of this part, *affected party* (in addition to the Service) means the person or entity with legal standing in a proceeding. It does not include the beneficiary of a visa petition.

Although the record contains a Form G-28, Notice of Entry of Appearance as Attorney or Representative, authorizing [REDACTED] to act on behalf of the applicant, [REDACTED] is no longer authorized to represent the applicant pursuant to 8 C.F.R. § 292.1(a).¹ As such, the decision will be furnished only to the applicant.

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 he 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 his 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, the applicant asserts that the information on the Form G-325A, Biographic Information, was a mistake. The applicant asserts, “[w]ho-ever typed it made a mistake” and he is willing to provide an affidavit to that effect if need be.” The applicant submits additional evidence 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).

¹ See <http://www.usdoj.gov/eoir/profcond/chart.htm>

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.

The record reflects that the applicant filed a Form I-589, Application for Asylum and for Withholding of Deportation, on June 27, 1994.² On the Form I-589, the applicant indicated that he arrived in the United States on February 18, 1994. Part D of the form, asks the applicant if he has traveled to the United States before and the applicant indicated “no.” On the Form G-325A

² On April 20, 2002, the applicant withdrew the Form I-589.

dated April 21, 1994, which accompanied the Form I-589, the applicant indicated that he resided in his native country, Bangladesh, from October 1960 to February 1994.

In an attempt to establish continuous unlawful residence in the United States since prior to January 1, 1982, to the date he attempted to file his application, the applicant submitted:

- An affidavit from [REDACTED] who indicated that the applicant resided with him at [REDACTED] from December 1987 to December 1990. The affiant indicated that the rent receipts and household bills were in his name.
- An additional affidavit from [REDACTED] who indicated that the applicant was in his employ as a painter from November 1984 to December 1990.
- An affidavit from [REDACTED] who indicated that the applicant resided with him at [REDACTED] from March 1981 to November 1987.
- Copies of envelopes with indecipherable postmarks.
- Affidavits from [REDACTED] and [REDACTED] who indicated that they met the applicant at a construction site and attested to the applicant's residences in Brooklyn, New York from March 1981 to December 1990.
- An affidavit from [REDACTED] who indicated that he met the applicant at a restaurant in 1982 and attested to the applicant's residences in Brooklyn, New York from March 1981 to December 1990.
- An affidavit from [REDACTED], who indicated that she met the applicant at a diner in 1981 and attested to the applicant's residences in Brooklyn, New York from March 1981 to December 1990.
- A letter dated May 31, 2005, from [REDACTED], [REDACTED], [REDACTED], in Brooklyn, New York, who indicated that the applicant has been an active member since 1985.

On July 1, 2005, the director issued a Notice of Intent to Deny, which advised the applicant that the affidavits submitted appeared to be neither credible nor amenable to verification and that no evidence was submitted demonstrating that the affiants had direct personal knowledge of the events testified to in their respective affidavits. The applicant was also advised of the contradicting information indicated on the Form G-325A.

The applicant was given 30 days in which to submit a rebuttal. The applicant, however, failed to respond to the notice. Accordingly, on October 28, 2005, the director denied the application.

On appeal, the applicant submits affidavits from [REDACTED] and [REDACTED] who indicated that they have known him since January 1981 and that the applicant used to "visit me now and then." The affiants attested to the applicant's continuous residence in the United States since that time.

The documents issued by the applicant have been considered. However, the documents do not support a finding that the applicant entered the United States prior to January 1, 1982, and

resided since that date through the date he attempted to file his application, as he has presented contradictory and inconsistent documents, which undermines his credibility.

As previously noted, Part D of the Form I-589 asks the applicant if he had traveled to the United States before and the applicant indicated "no." The applicant, in affixing his signatures on the Forms I-589 and G-325A certified that the information he provided was *true* and *correct*. If incorrect information has been provided, it is reasonable to expect an explanation from the alleged preparer in order to resolve the discrepancies. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Furthermore, the Form I-589 does not reflect that anyone other than the applicant completed the application as no information pertaining to the preparer is listed on the application.

The inconsistencies raise significant issue to the legitimacy of the applicant's residence in the United States during the requisite period, and tend to establish that the applicant utilized documents in a fraudulent manner in an attempt to support his claim of residence in the United States during the requisite period. By engaging in such an action, the applicant has irreparably harmed his own credibility as well as the credibility of his claim of continuous residence in the United States for the requisite period.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an 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, in fact, lies, will not suffice. *Matter of Ho*, 19 I. & N. Dec. 582 (BIA 1988).

Given the credibility issues arising from the documentation provided by the applicant, it is determined that the applicant has not met his burden of proof. Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he 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.

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