

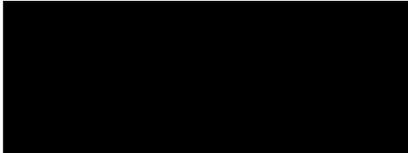
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**



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DATE: JUL 01 2011

Office: CHARLESTON

FILE: 

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.

*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, Charleston, South Carolina. An appeal was rejected by the director. The director subsequently reopened the proceeding to provide the applicant with appeal rights and an appeal has been filed. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Following *de novo* review, the AAO found that that the director's basis for denial of your Form I-687 was in error. However, the AAO identified alternative grounds for denial of the application. Specifically, the AAO noted that the applicant failed to submit sufficient evidence in support of his application.

On May 9, 2011, the AAO sent the applicant a Notice of Intent to Deny (NOID) informing the applicant of the inconsistencies and deficiencies in his application and providing the applicant with an opportunity to submit additional evidence to establish that he entered the United States before January 1, 1982, and that he continuously resided in the United States in an unlawful status since such date for the duration of the requisite period. The applicant responded to the AAO's request.

The AAO has reviewed all of the evidence, and has made a *de novo* decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the 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).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), "until the date of filing" shall mean 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 shall be regarded as having resided continuously in the United States if, at the time of filing no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred eighty (180) days during the requisite period, unless the applicant can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed. 8 C.F.R. § 245a.2(h)(1)(i).

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. 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. *Matter of Ho*, 19 I & N Dec. 582, 591-592 (BIA).

The issue in this proceeding is whether the applicant has established that he (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status throughout the requisite period. The documentation that the applicant submits in support of his claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists of witness statements and other evidence. The AAO has

reviewed each document in its entirety to determine the applicant's eligibility; however, the AAO will not quote each witness statement in this decision. Some of the evidence submitted indicates that the applicant resided in the United States after May 4, 1988; however, because evidence of residence after May 4, 1988 is not probative of residence during the requisite time period, it shall not be discussed.

The applicant claims on his current Form I-687 that he lived at 55 West 110<sup>th</sup> Street, New York, New York from November 1981 to December 1997. The applicant claims that he visited friends in Canada from December 1986 to January 1987. He also claims that he was self-employed as a construction assistant in New York, Connecticut and South Carolina from April 1982 to 2005. This is inconsistent with the information given by the applicant on his initial Form I-687 application. On the initial Form I-687, the applicant claims that he lived [REDACTED] from July 1981 to May 1985 and [REDACTED] from May 1985 to June 1990. Further, the applicant claims that he visited a friend in Canada from July 15, 1987 to July 30, 1987 and that he was self-employed as a peddler from August 1981 to present.

No evidence of record resolves these inconsistencies cited above. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. 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. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The AAO issued a Notice of Intent to Deny (NOID) on May 9, 2011 informing the applicant of the inconsistencies and deficiencies in the record and providing him with an opportunity to respond.

The applicant's response was received by USCIS on June 6, 2011. The applicant submits a letter addressing some of AAO's concerns, a copy of the AAO's NOID, a copy of the applicant's description of offense, a copy of the applicant's arrest warrant, a copy of the applicant's certificate of alternatives training from the Alternatives Life Improvement Center, Inc. dated August 7, 1997 and a copy of the referral for the applicant's spouse to attend the Alternatives to Domestic Violence family program for six weeks.

In his response, the applicant states that when he filed his initial legalization application in 1986, he did establish with tangible material evidence of his entry into the United States prior to January 1, 1982 with evidence dated 1981. The applicant states that he applied for his passport in 1988, traveled to his country to visit his family and reentered the United States for the second time in 1990 with a proper travel document, which is the reason for the 1990 stamp. The applicant also claims that he initially entered the United States without inspection through Canada but does not state the date he entered. The applicant provided a copy of the admission stamp in his passport showing that he was admitted into the United States on January 16, 1991 at New York, New York, with an F1 nonimmigrant visa issued at Dakar, Senegal on December 31, 1990. The record also contains a copy of the applicant's Form I-94 showing that he was admitted into the United States at New York, New York on January 16, 1991 as an F-1, Student, for duration of status. This evidence does not establish the applicant entered into the United States prior to January 1, 1982.

The applicant states in his response that the inconsistencies may be a result of human error made by the secretary who was typing his application. However, upon signing the initial and current Form I-687 applications, the applicant certified, under the penalty of perjury, that the information given on these applications was true and correct.

Upon review of the record of proceeding, the applicant's class determination form indicates that the applicant entered the United States without inspection in July 1981. Form G-325A, filed in conjunction with the applicant's Form I-485 application reveals that the applicant resided [REDACTED] from 1981 to December 1990.

The applicant submitted affidavits from [REDACTED] to establish his initial entry and residence in the United States during the requisite period. [REDACTED] attests to the applicant's absence from the United States from July 15, 1987 to July 30, 1987 to go to Canada. This conflicts with the information given by the applicant on his current Form I-687 application. The applicant claims on his current Form I-687 application that he visited friends in Canada from December 1986 to January 1987. The affiant provides no other information about the applicant.

[REDACTED], clerk at the Hotel [REDACTED] states in a letter that the applicant resided in this building from [REDACTED] where the applicant shared the room and rent with a friend. [REDACTED] states in a letter that the applicant resided at the Hotel [REDACTED] where the applicant shared the room and rent. [REDACTED] states in her affidavit that she has personal knowledge of the applicant's residences in the United States at [REDACTED]

[REDACTED]. However, the applicant claims on his current Form I-687 that he resided at [REDACTED]. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. *Matter of Ho, supra.*

While an applicant's failure to provide evidence other than affidavits shall not be the sole basis for finding that he failed to meet the continuous residency requirements, an application which is lacking in contemporaneous documents cannot be deemed approvable if considerable periods of claimed continuous residency rely entirely on affidavits which are considerably lacking in certain basic and necessary information. The affiants statements are significantly lacking in detail and do not establish that the affiants actually had personal knowledge of the events and circumstances of the applicant's initial entry and residence in the United States. The affidavits do not provide much relevant information beyond acknowledging that the affiants have knowledge of the applicant's residence in the United States in the 1980s which is inconsistent with the applicant's testimony and other evidence of record. Overall, the affidavits provided are so deficient in detail that they can be given no significant probative value. Accordingly, the applicant has failed to provide probative and credible evidence of his entry and continuous residence in the United States for the duration of the requisite period.

The letter signed by [REDACTED] of the [REDACTED] states that the applicant has been a member of the Muslim community and has been here since July 1981. This is inconsistent with other evidence of record [REDACTED] does not state the date he met the applicant, his membership period in the organization or any information concerning the applicant's entry and dates of residence in the United States. On his current Form I-687 application, the applicant does not claim to be affiliated with any religious or cultural organization. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. *Matter of Ho, supra*. 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 letter does not contain most of the aforementioned requirements and will be given nominal weight.

The inconsistency regarding the date of the applicant's initial entry into the United States during the requisite period is material to his claim, in that it has a direct bearing on his residence in the United States for the duration of the requisite period. As stated above, 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. *Matter of Ho, supra*. This contradiction undermines the credibility of the applicant's claim of entry into the United States prior to January 1, 1982 and continuous residence in the United States during the requisite period.

Upon a *de novo* review of all of the evidence in the record, the AAO finds that the evidence submitted by the applicant has not established that he is eligible for the benefit sought. The statements currently in the record which attempt to substantiate the applicant's residence in the United States during the statutory period are not objective, independent credible evidence regarding the applicant's claim that he maintained continuous residence in the United States throughout the statutory period.

Based upon the foregoing, 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.

Evidence in the record shows that the applicant was arrested and charged with violating section 16-25-20 of the South Carolina Code, criminal domestic violence on or about March 28, 1997 in North Charleston. It appears that the charge was *nolle prossed*.

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