

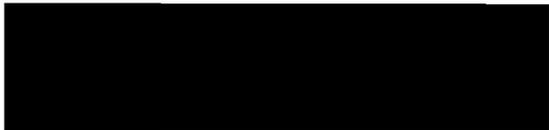
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



**U.S. Citizenship  
and Immigration  
Services**



L1

DATE: **JUN 27 2011**

Office: NEW YORK

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. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case 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.

*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 record indicates that the applicant filed a Form I-687 Application for Temporary Resident Status on April 11, 2005. On March 21, 2007, the director denied the application noting that the applicant failed to appear for the interview and noted that requesting more time to gather documents was not an excuse warranting a rescheduling of the interview. Thus, the director indicated that the application was abandoned. On March 19, 2009, the applicant filed a motion to reopen pursuant to the terms of the Northwest Immigrant Rights Project Settlement Agreements (NWIRP). After issuing a notice of intent to deny (NOID) the NWIRP motion, the director subsequently dismissed the motion.

On October 5, 2010, U.S. Citizenship and Immigration Services (USCIS) informed the applicant that, pursuant to a recent court order, applications for temporary resident status may not be denied based on abandonment. The applicant was informed that he was entitled to file an appeal with the AAO which must be adjudicated on the merits.

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 the director's basis for denial of the 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 establish his class membership under NWIRP or his continuous residence in the United States during the relevant period.

On May 4, 2011, the AAO issued a notice of intent to deny (NOID) informing the applicant of the deficiencies in the record and providing her with an opportunity to respond. In response to the NOID, the applicant asserts that he has established his unlawful residence for the requisite time period and submits two affidavits, receipts and a lease.

On September 9, 2008 the court approved a Stipulation of Settlement in the class action *Northwest Immigrant Rights Project, et al vs. USCIS, et al*, 88-CV-00379 JLR (W.D. Was.) (NWIRP). Class members are defined, in relevant part, as:

1. Class Members [include] all persons who entered the United States in a nonimmigrant status prior to January 1, 1982, who are otherwise *prima facie* eligible for legalization under § 245A of the INA [Immigration & Nationality Act], 8 U.S.C. § 1255a, who are within one or more of the Enumerated Categories described below in paragraph 2, and who

- (A) between May 5, 1987 and May 4, 1988, attempted to file a complete application for legalization under § 245A of the INA and fees to an INS officer or agent acting on behalf of the INS, including a Qualified Designated Agency (“QDE”), and whose applications were rejected for filing (hereinafter referred to as ‘Subclass A members’); or
- (B) between May 5, 1987 and May 4, 1988, attempted to apply for legalization with an INS officer, or agent acting on behalf of the INS, including a QDE, under § 245A of the INA, but were advised that they were ineligible for legalization, or were refused legalization application forms, and for whom such information, or inability to obtain the required application forms, was a substantial cause of their failure to file or complete a timely written application (hereinafter referred to as ‘Sub-class B’ members); or
- (C) filed a legalization application under INA § 245A and fees with an INS officer or agent acting on behalf of the INS, including a QDE, and whose application
  - i. has not been finally adjudicated or whose temporary resident status has been proposed for termination (hereinafter referred to as ‘Sub-class C.i. members’),
  - ii. was denied or whose temporary resident status was terminated, where the INS or CIS action or inaction was because INS or CIS believed the applicant had failed to meet the ‘known to the government’ requirement, or the requirement that s/he demonstrate that his/her unlawful residence was continuous (hereinafter referred to as ‘Sub-class C.ii members’).

2. Enumerated Categories

- (1) Persons who violated the terms of their nonimmigrant status prior to January 1, 1982 in a manner known to the government because documentation or the absence thereof (including, but not limited to, the absence of quarterly or annual address reports required on or before December 31, 1981) existed in the records of one or more government agencies which, taken as a whole, warrants a finding that the applicant was in an unlawful status prior to January 1, 1982, in a manner known to the government.
- (2) Persons who violated the terms of their nonimmigrant visas before January 1, 1982, for whom INS/DHS records for the relevant period (including required school and employer reports of status violations) are not contained in the alien’s A-file, and who are unable to meet the requirements of 8 C.F.R. §§ 245a.1(d) and 245a.2(d) without such records.
- (3) Persons whose facially valid ‘lawful status’ on or after January 1, 1982 was obtained by fraud or mistake, whether such ‘lawful status’ was the result of

- (a) reinstatement to nonimmigrant status;
- (b) change of nonimmigrant status pursuant to INA § 248;
- (c) adjustment of status pursuant to INA § 245; or
- (d) grant of some other immigration benefit deemed to interrupt the continuous unlawful residence or continuous physical presence requirements of INA § 245A.

The AAO finds that the applicant is not a member of the NWIRP class as enumerated above because the record of proceeding contains inconsistent information about his entry into the United States. On a CSS Newman worksheet signed on October 15, 1991 the applicant stated that he first entered the United States without inspection on October 25, 1981 in Miami, Florida. Therefore, the applicant was never in lawful nonimmigrant status prior to January 1, 1982.

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 applicant 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).

Additionally, the applicant is not eligible for temporary resident status under NWIRP because he has not established his continuous residence for the duration of the relevant period. 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 physical presence under the NWIRP Settlement Agreement, 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. NWIRP Settlement Agreement paragraph 8 at pp. 14-15.

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.

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 (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 1982 and lived in an unlawful status during the requisite period consists of affidavits of relationship written by friends, receipts and a lease.

The affidavits from [REDACTED] all contain statements that the affiants have known the applicant for years and that attest to the applicant being physically present in the United States during the requisite period. These affidavits fail, however, to establish the applicant's continuous unlawful residence in the United States for the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality; 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.

In their affidavits, the affiants do not state when they met the applicant in the United States or the year that they themselves arrived in the United States.

The record also contains a letter dated December 10, 1990 from [name illegible], [redacted], on the society's letterhead. The letter states that the applicant has been associated with the organization since March 1982 and used to attend social activities. The record also contains a letter dated December 12, 1990 from [name illegible], on [redacted] letterhead. This letter does not provide a title for the person who signed the letter. The letter states that the applicant has been associated with the organization since February 1982 and used to attend the mosque for prayers and other religious activities. The letter also states that the applicant was involved in volunteer services.

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 submitted do not comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(v).

None of the witness statements provide concrete information, specific to the applicant and generated by the asserted associations with him, which would reflect and corroborate the extent of those associations and demonstrate that they were a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the affidavits. To be considered probative and credible, witness affidavits 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. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Upon review, the AAO finds that, individually and together, the witness statements do not indicate that their assertions are probably true. Therefore, they have little probative value.

The record also contains receipts dated June 17, 1982 and June 12, 1987. This is some evidence that the applicant was in the United States on those dates.

The record contains a lease dated May 1, 1987 signed by the applicant and listing him as the tenant of [redacted] "for a term to commence on May 1987 and to end on April 1987." The AAO notes that there appears to be a typographical error in the lease. As it reads, the lease ends before it begins. Further, the lease lists only the months and does not provide the day when the lease begins and ends. This is some evidence that the applicant was in the United States on May 1, 1987.

On appeal, the applicant states that he is a class member under NWIRP but does not address the AAO's concerns regarding the inconsistent information in the record as described above.

Therefore, 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.

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