

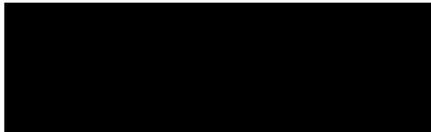
identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**PUBLIC COPY**

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



L,

DATE: **JUN 27 2011**

OFFICE: LOS ANGELES

FILE:

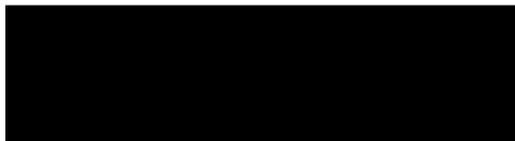


IN RE: Applicant:



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:



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.

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, Los Angeles. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

On January 6, 2006, the applicant submitted a Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (Act). On January 16, 2007, the director of the Los Angeles office erroneously denied the I-687 application, finding that the applicant abandoned the application, pursuant to 8 C.F.R. § 103.2(b)(13), by failing to appear for scheduled interviews on November 27, 2006 and January 16, 2007.<sup>1</sup> On February 19, 2007, the applicant filed a Motion to Reopen, which was subsequently denied on the same basis. Because the director erred in denying the application based on abandonment, on September 29, 2010, the director of the National Benefits Center issued a notice advising the applicant of the right to appeal the decision to the Administrative Appeals Office (AAO). The director's decision will therefore be withdrawn, and the AAO will consider the applicant's claim *de novo*, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.2(d)(6).<sup>2</sup>

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.

---

<sup>1</sup> On December 14, 2009, the United States District Court for the Eastern District of California ruled that United States Citizenship and Immigration Services (USCIS) may not apply its abandonment regulation, 8 C.F.R. § 103.2(b)(13), in adjudicating legalization applications filed by CSS class members. *See, CSS v. Michael Chertoff*, Case 2:86-cv-01343-LKK-JFM.

<sup>2</sup> The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

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.

The issue in this proceeding is whether the applicant established 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. The documentation that the applicant submits in support of his claim to have arrived in the United States before January 1982 and resided in an unlawful status during the requisite period consists of declarations from four individuals claiming to know the applicant during the requisite period. On appeal, neither counsel nor the applicant submitted additional evidence. The AAO has reviewed each document in its entirety to determine the applicant's eligibility.

The declarations from [REDACTED] are general in nature and state that the witnesses have knowledge of the applicant's residence in the United States for all of the requisite period. The declarations [REDACTED] are general in nature and state that the applicant left India to go to Singapore and then to the United States in 1980. These

statements fail 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.

Neither declarations provides detailed and 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 have 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 statements must do more than simply state that a declarant 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.

For example, the first two declarations fail to provide the applicant's place of residence during the requisite period or specific details regarding their associations with the applicant during the time addressed. The latter declarations fail to provide direct knowledge of the applicant's entry into the United States or during the requisite period and are not amenable to verification. Thus, they will be given no weight as evidence in support of the applicant's claim. Upon review, the AAO finds that, individually and together, the remaining two witness statements do not indicate that their assertions are probably true. They have minimal probative value and will be given little weight as evidence in support of the applicant's claim of continuous residence in the United States during the requisite period.

It is also noted that the record contains a Form G-325A, Biographic Information, signed by the applicant under severe penalties for knowingly and willfully falsifying or concealing a material fact. On his Form G-325A, the applicant indicated that his last address outside of the United States for more than one year was in Punjab, India, where he resided from June 1962 to September 1991. This indicates that the applicant did not begin residing in the United States until September 1991. This information directly contradicts the applicant's claim to have resided in the United States during the requisite period. The Form G-325A also reflects that the applicant was married in India on February 18, 1986. In his Form I-687, the applicant listed only one absence from the United States during the requisite period, from June 1987 to July 1987.

The record also contains the applicant's Form I-589, Request for Asylum in the United States, signed by the applicant on December 30, 1991 and again on May 2, 1994. In his Form I-589, at Question #28, the applicant stated that his date of departure from his country of nationality was on September 28, 1991. From Question #34 through #38, the applicant describes being active in an organization in India in 1984 and being arrested in India in 1988. These inconsistencies directly contradict the applicant's claim of continuous residence during the requisite period.

Based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he continuously resided in an unlawful status in the United States from before January 1, 1982 through 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.

Beyond the director's decision, the record reflects that, on March 8, 1996, the applicant was charged with *sale of alcohol to a minor*, a misdemeanor, in violation of section 25658A of the California Business and Professions Code in the Municipal Court of Fullerton (CA030073J). The record reflects that the applicant was convicted and sentenced to a fine. This single misdemeanor conviction does not render the applicant ineligible pursuant to 8 C.F.R. § 245a.2(c)(1).

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