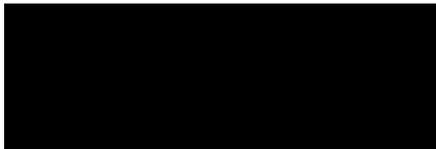


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**U.S. Citizenship
and Immigration
Services**



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DATE: **AUG 22 2012** OFFICE: NATIONAL BENEFITS CENTER 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, National Benefits Center. The director subsequently reopened the proceeding. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

On December 5, 2005, 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 September 19, 2006, the director of the National Benefits Center 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 provide documentation establishing his eligibility for temporary resident status.¹ Specifically, the director stated that the applicant failed to respond to the Notice of Intent to Deny (NOID). Because the director erred in denying the application based on abandonment, on October 12, 2010, the director issued a notice advising the applicant of the right to appeal the decision to the Administrative Appeals Office (AAO).

On November 10, 2010, the applicant, submitted a Form I-694, Notice of Appeal of Decision Under Section 210 or 245A, which stated that he never received the NOID and would like to have the opportunity to submit documentation in support of his Form I-687 application.² On December 2, 2011, the AAO issued the applicant a Notice of Intent to Deny (NOID) and provided the applicant 21 days in which to respond or to provide additional evidence in support of his claim. Counsel, on behalf of the applicant, submitted additional evidence and requested additional time to obtain the applicant's criminal records. The applicant was granted an extension until February 21, 2012. As of the date of this decision, no further evidence or brief has been received; therefore, the record will be considered complete. The director's decision will 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).³

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

¹ 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.

² The record reflects that a copy of the Record of Proceedings was completed and sent to the applicant on June 6, 2012. NRC2011111306.

³ 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).

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.

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 evidence submitted in support of the applicant's claim to have arrived in the United States before January 1982 and to have resided in an unlawful status during the requisite period consists of declarations from four individuals. The AAO has reviewed the document to determine the applicant's eligibility.

The declarations from [REDACTED] are general in nature. [REDACTED] states that he first met the applicant in the United States between 1982 and 1983. The other declarants fail to provide the date they first met the applicant or any other probative details about the applicant's residences or employment during the requisite period. The declarations attest more to the applicant's moral character rather than the circumstances of his residence in the United States during the requisite period. The declarations fail to provide concrete information, specific to the applicant and generated by the asserted associations with the applicant, which would reflect and corroborate the extent of those associations, and demonstrate that the declarants have a sufficient basis for reliable knowledge about the applicant's residence in the United States during the requisite period. Lacking concrete details, the declarations provide little probative value and shall be afforded minimal weight as evidence in support of the applicant's claim. Given this, the AAO finds the applicant's claim to lack credibility and to be probably not true.

The record also reveals that the applicant was arrested and charged with possession of cocaine on May 1, 1993 in Dade County, Florida. The AAO requested a court-certified copy of each of the relevant, final court dispositions. The applicant has failed to submit the requested documentation. The applicant has not proved that he is admissible to the United States and, for this reason as well, the applicant has not established that he is eligible for temporary resident status in the United States.

Based upon the foregoing, the AAO finds that 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 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*. In addition, the applicant has failed to establish that he is admissible to the United States. 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.