

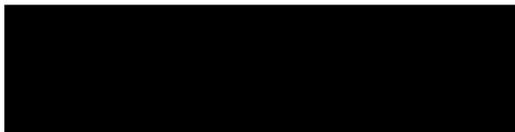
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



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DATE: Office: LOS ANGELES

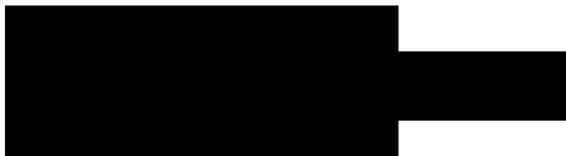
FILE:

FEB 22 2012

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.

The record indicates that the applicant filed a Form I-687 Application for Temporary Resident Status on December 27, 2005. On March 29, 2007, the director denied the applicant class membership. The applicant appealed to the special master. On November 29, 2010, the special master granted the appeal and determined that the applicant was a class member. On May 19, 2011, the director denied the application and determined that the applicant failed to establish that she entered the United States before January 1, 1982 and continuously resided in an unlawful status in the United States for the requisite period.

On appeal, the applicant, through counsel, asserts that she has submitted sufficient evidence.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

Under the CSS/Newman Settlement Agreements, USCIS shall adjudicate each Form I-687 under the provisions of section 245A of the Act, regulations and administrative and judicial precedents which the Immigration and Naturalization Service (INS), now USCIS, followed in adjudicating the Forms I-687 timely filed during the Immigration Reform and Control Act of 1986 (IRCA) application period. See CSS/Newman Settlement Agreements.

An applicant who files for temporary resident status pursuant to the CSS/Newman Settlement Agreements 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 through the date of filing the Form I-687 during the original application period or through the date that the applicant attempted to file but was dissuaded from doing so by an agent of the INS. See *id.* and § 245A(a)(2)(A) of the Act.

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 that she (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.

In an attempt to establish continuous unlawful residence since before January 1, 1982 through the end of the relevant period, the applicant provided declarations and affidavits from seven individuals.

Six of the seven individuals wrote declarations. All of the declarations are virtually identical fill-in-the-blank form declarations and state that the declarant is aware that the applicant resided in the United States from March 5, 1981 to May 4, 1988.

The affidavits from [REDACTED] are virtually identical and state that the applicant informed the affiant that she was “turned away by the Immigration and Naturalization Service during the application period May 5, 1987 to May 4, 1988.” The affidavits also state that the applicant lived in Los Angeles since 1981 and occasionally visited the Chicago area.

In their affidavits, [REDACTED], state that they have been living in Chicago since 1983 and 1984, respectively. They both state that they attended a get together for the applicant in Karachi, Pakistan in 1981 before she left for the United States. They also state that they visited Los Angeles in 1985 and 1987 and stayed with the applicant. The affiants fail to state how they date their recollections.

In his affidavit [REDACTED] states that he invited the applicant to his wedding reception on May 29, 1981. [REDACTED] also states that he has visited Los Angeles many times since 1981 and always visited her when he was there.

In his affidavit, [REDACTED] states that he met the applicant at [REDACTED] sister's engagement party on March 27, 1981. [REDACTED] also states that he has visited Los Angeles many times since 1981 for business and has always had lunch or dinner with the applicant in the Garden Grove area.

The AAO notes that the affiant's previous declarations did not mention the visits listed in the affidavits. Further, the affidavits were written after the director's denial in which he noted that all of the declarations submitted were from individuals living in Illinois even though the applicant states that she lived in California during the requisite period.

The declarations contain statements that the declarants have known the applicant for years and that attest to the applicant being physically present in the United States during the required period. These statements 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.

The declarants' statements do not 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 they were a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the affidavit. 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, the witnesses' statements do not indicate that their assertions are probably true. Therefore, they have little probative value.

In his decision, the director noted that the applicant's statements during her July 3, 2006 interview were inconsistent with evidence in the record of proceeding. During her interview, the applicant handwrote and signed a sworn statement, indicating that she did not know how she entered the United States and that she attempted to file for legalization 3 to 4 months before going to Mexico in August 1987. The applicant also stated that she and her husband lived in Pakistan for at least 4 to 4 ½ years. In her statements dated December 14, 2005 and July 14, 2011, the applicant stated that she

left the United States between May 5, 1987 and May 4, 1988 and re-entered. In his decision, the director also noted that the record contained no evidence of a passport dated July 8, 1995.

The AAO notes that one of the applicant's affiants, [REDACTED] served as the translator during her interview on July 3, 2006 in Los Angeles, California. The record contains a form signed by the applicant and [REDACTED]. The record also contains a photocopy of [REDACTED] Illinois driver's license.

On appeal, counsel addressed the director's concerns and asserted that the applicant is elderly¹ and she is unable to recall details of events that took place in 1981. Counsel also states that the applicant is unable to produce her previous passport because the consulate kept her previous passport when she applied for a new passport.

There is evidence in the record that the applicant entered the United States with a B1/B2 visa on August 18, 1992. The applicant may also be inadmissible due to fraud or willfully misrepresenting a material fact, seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act. See § 212(a)(6)(C)(i) of the Act. Although this ground of inadmissibility may be waived pursuant to section 212(i)(1) of the Act, there is no evidence in the record that the applicant has requested such a waiver.

While an applicant's failure to provide evidence other than affidavits shall not be the sole basis for finding that she 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 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 they knew the applicant for all or part of the requisite period. Overall, the affidavits provided are can only be given nominal probative value.

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). The applicant has been given the opportunity to satisfy her burden of proof with a broad range of evidence pursuant to 8 C.F.R. § 245a.2(d)(3). The absence of sufficiently detailed documentation to corroborate the applicant's claim of entry into the United States prior to January 1, 1982 and continuous residence for the entire requisite period seriously detracts from the credibility of this claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the evidence of record, it is concluded that the applicant failed to establish that she entered the United States prior to January 1, 1982 and continuously resided in an unlawful status in the United States from prior to January 1, 1982 through the date she attempted to file a Form I-687 application as required under both 8 C.F.R. §

¹ The applicant is currently 74 years of age.

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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.

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