

**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**

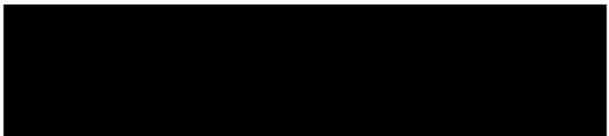


L1

DATE: **FEB 27 2012** OFFICE: HOUSTON 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, Houston. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

On January 8, 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 September 10, 2007, the director of the Houston 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 a scheduled interview on October 5, 2006.<sup>1</sup> Because the director erred in denying the application based on abandonment, on October 4, 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).

On November 4, 2010, the applicant submitted a Form I-694, Notice of Appeal of Decision Under Section 210 or 245A. On January 4, 2012, 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. In response, counsel, on behalf of the applicant, submits additional evidence. 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).<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. 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.* 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 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 relevant 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 witness statements from four individuals claiming to know the applicant during the requisite period. The AAO has reviewed the documents to determine the applicant's eligibility. A large portion of the evidence submitted in response to the AAO's NCID indicates that the applicant resided in the United States after the requisite period; however, because evidence of such residence is not probative of residence during the requisite time period, it shall not be discussed.

The record contains attestations from [REDACTED] and another declarant (signature illegible). The witness statements are general in nature and state that the applicant has resided in the United States for all, or a portion, of the requisite period. The 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.

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.

The declaration from [REDACTED], the applicant's aunt, states that she brought the applicant from Mexico to the United States as a child (13 years old) in 1981. She states that he resided with her from November 1981 until November 1987, he did not attend school, and he moved to North Carolina in 1987 to live with his uncle, [REDACTED]. The affidavit from [REDACTED], the applicant's uncle, states the applicant resided with him in North Carolina from November 1987 until February 1990 and they worked together at a farm. The declaration from Carolina Espinoza, a friend, states that she met the applicant around 1982, she would see him in the neighborhood and then she stopped seeing him for a while on or around 1987. The declarant states that she reconnected with the applicant in 2007. The remaining declaration (signature illegible) states that the declarant has known the applicant since 1981 and describes his moral character.

The witness statements fail to 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 the witnesses have a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the statements. For example, Ms. Guzman failed to provide specific details regarding the applicant's method of entry into the United States or the six years they resided together that would corroborate the claimed relationship. The remaining declaration fails to give any details regarding the circumstances of

the applicant's residence during the requisite period, such as his place of residence. None of the witnesses provide evidence of their residence in the United States during the requisite period to corroborate their assertions. Given the lack of details, the witness statements provide minimal probative value and will be given minimal weight as evidence in support of the applicant's claim.

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 such date 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.

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