

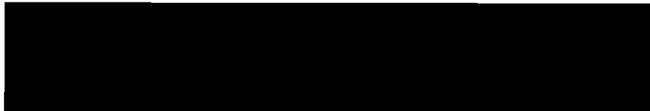
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship and Immigration Services

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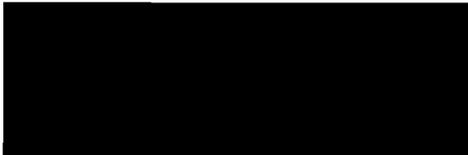
Office: NEW YORK

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:



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, New York. The director subsequently reopened the proceeding.¹ The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 that the director's basis for denial of the applicant's 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 submit sufficient evidence in support of his application.

On November 8, 2011, the AAO sent the applicant a notice informing the applicant of the deficiencies in his application and providing the applicant with an opportunity to submit additional evidence to establish that he entered the United States before January 1, 1982, and that he continuously resided in the United States in an unlawful status since such date for the duration of the requisite period. The applicant responded to the AAO's request.

The AAO has reviewed all of the evidence, and has made a *de novo* decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the evidence.

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).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), "until the date of filing" shall mean 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 shall be regarded as having resided continuously in the United States if, at the time of filing no single absence from the United States has exceeded forty-five (45) days, and the aggregate

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.

of all absences has not exceeded one hundred eighty (180) days during the requisite period, unless the applicant can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed. 8 C.F.R. § 245a.2(h)(1)(i).

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 periods, 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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's 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).

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 applicant 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 (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. 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. *Matter of Ho*, 19 I & N Dec. 582, 591-592 (BIA).

The issue in this proceeding is whether the applicant has established that he (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. 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 and a letter from a previous employer.

The applicant states in his affidavit that he entered the United States through Canada with his father, [REDACTED], on November 12, 1981. The applicant also claimed on his Form I-687 application that he resided in the United States at [REDACTED] from November 1981 to December 1987.

The applicant submitted, as proof of his asserted date of entry into the United States and continuous residence in the United States during the requisite period, witness statements from [REDACTED], [REDACTED], and [REDACTED] who state that they have known the applicant for all or part of the requisite period. However, the statements of the witnesses lack sufficient detail, because they fail to provide concrete information specific to the applicant which would demonstrate that they have a sufficient basis for reliable knowledge about the applicant's residence in the United States during the requisite period. The affidavits do not provide much relevant information beyond acknowledging that they have knowledge of the applicant, the applicant's address in Staten Island, New York, and that he worked for [REDACTED].

In the affidavit from [REDACTED] he states that the applicant worked for him as a part time laborer at his business, [REDACTED] Staten Island, New York from January 1983 to December 1987.

The applicant responded to the AAO's notice of deficiencies in the record on November 23, 2011. The applicant submitted a letter dated November 20, 2011 stating that he arrived in the United States on November 12, 1981 with his father. The applicant claims that his father handled all the paper work. The applicant states that his father is now deceased and most of the documents are either destroyed or missing. The applicant claims that he submitted credible affidavits as evidence of his residence in the United States from 1981 to now.

Although the witnesses claim to have personal knowledge of the applicant's residence in the United States during the requisite period, the witness statements do not 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 in the United States during the requisite period. To be considered probative and credible, witness statements must do more than simply state that a witness knows an applicant and that the applicant has lived in the United States for a specific period. Their content must include sufficient detail from a claimed relationship to indicate that it probably did exist and that the witness, by virtue of that relationship, does have knowledge of the facts alleged. For instance, the witnesses do not state how they date their initial meeting with the applicant in the United States, or specify social gatherings, other special occasions or social events when they saw and communicated with the applicant during the requisite period. The witnesses also do not state how frequently they had contact with the applicant during the requisite period. The AAO finds that

the witness statements do not provide sufficient details that would lend credence to their claimed knowledge of the applicant's residence in the United States during the requisite period. For these reasons, the AAO finds that the witness statements do not indicate that their assertions are probably true.

While an applicant's failure to provide evidence other than affidavits shall not be the sole basis for finding that he 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 significantly 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. Overall, the affidavits provided are so deficient in detail that they can be given no significant probative value.

The applicant also submitted letters regarding his registry as an organ and blood donor. However, the letters are dated after May 4, 1988 and evidence of residence after May 4, 1988 is not probative of residence during the requisite time period.

The applicant also states that he came across some photos of himself from 1981 in the Staten Island community. These photographs were not submitted by the applicant and even if they were submitted, this evidence does not establish the applicant's continuous residence during the requisite period. Accordingly, the applicant has failed to provide probative and credible evidence of his entry and continuous residence in the United States for the duration of the requisite period.

The applicant also claims in his letter that he made two departures from the United States; one from January 3, 1987 to February 7, 1987 and the other from December 1987 to 1998.

An applicant shall be regarded as having resided continuously in the United States if, at the time of filing the application for temporary resident status, no single absence from the United States has exceeded 45 days, and the aggregate of all absences has not exceeded 180 days between January 1, 1982, through the date the application is filed, unless the alien can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the alien was maintaining residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.1(c)(1)(i).

On Form I-687, the applicant claims that he traveled to Sri Lanka to visit his mother from January 1987 to February 1987 and again from December 1987 to May 1998. Accordingly, the applicant disrupted his period of required continuous residence and physical presence in the United States during the requisite period. Absent an explanation or other evidence, the applicant has not established that his absence from the United States from December 1987 to the end of the requisite period did not disrupt any continuous residence in the United States, or that the applicant's absence was due to emergent reasons. "Emergent reasons" is defined as "coming unexpectedly into being." *Matter of C*, 19 I&N Dec. 808 (Comm. 1988).

In a letter, the applicant states that he went to Sri Lanka in December 1987 and intended to return back to the United States but his father, who accompanied him on the trip became severely ill and he had to remain to care for his father, who died in 1993. The applicant states that he always wanted to return to the United States but was unable to do so until 1998. The applicant states that this account is the emergent reason but has not submitted medical evidence of his father's illness and his father's death certificate to account for his period outside the United States until his father's death in 1993. Absent such evidence, the applicant has not shown that his absence from the United States beginning in December 1987 did not disrupt his continuous residence.

Upon a *de novo* review of all of the evidence in the record, the AAO finds that the evidence submitted by the applicant has not established that he is eligible for the benefit sought. The evidence currently in the record is insufficient to establish the applicant's claim that he maintained continuous residence in the United States throughout the statutory period.

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.