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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: **JUN 01 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: SELF-REPRESENTED

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 J. 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 District Director (director), National Benefits Center. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a native of Liberia, submitted a Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (Act), and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet on January 11, 2006. On May 21, 2007, the director 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 respond to the Notice of Intent to Deny (NOID) dated March 23, 2007.¹ 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 AAO.

On April 2, 2012, the AAO withdrew the decision of the director and considered the application on a *de novo* basis, 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).² Based on the evaluation, on April 2, 2012, the AAO issued a Notice of Intent to Deny (NOID), notifying the applicant of its intention to deny her application because the applicant failed to establish by a preponderance of the evidence that she has resided in the United States in an unlawful status for the duration of the requisite period.

On April 23, 2012, the AAO received the applicant's response to the NOID.

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 245A(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 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 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).

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) 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 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.

The issue in this proceeding is whether the evidence submitted by the applicant in response to the NOID is sufficient to establish that she (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 of time. The AAO finds that the applicant has failed to meet this burden.

In the April 2, 2012 NOID, the AAO notified the applicant that she has submitted insufficient evidence to establish that she entered the United States before January 1, 1982 and resided continuously in the country through May 4, 1988. Specifically, the AAO noted that a copy of her passport and a copy of a Form I-94, Departure Record show that the applicant entered the United States as a nonimmigrant B-2 visitor on January 26, 1985. The AAO requests the applicant to submit rebuttal evidence or other evidence of her residence in the United States from before January 1, 1982.

In response, the applicant submitted the following documentation:

- A copy of an Immunization Record from Rowan County Health Department indicating that the applicant was administered a series of immunizations from February 25, 1985 through November 6, 1985.
- A copy of a Form I-94, Departure Record indicating that the applicant was admitted to the United States on January 26, 1985, as a B-2 visitor with authorization to remain until July 25, 1985.
- A letter signed by [REDACTED] secretary for [REDACTED] Salisbury, North Carolina, stating that the applicant has been a member of the church for over twenty years and has served the church community in various capacities.
- A copy of a High School Diploma from [REDACTED] Georgia, awarded to the applicant on June 4, 1988.
- A copy of a birth certificate, showing that the applicant gave birth to her son in Greensboro, North Carolina on [REDACTED] 1993.
- Copies of bank statement, bills, money transfer receipts, and the applicant's medical records, dated in 2011 and 2012.

The AAO acknowledges receipt of these documents and notes that some of the documents are dated beyond May 4, 1988. Those documents will not be discussed as they are not probative evidence of the applicant's residence in the United States during the requisite period. The

documents submitted by the applicant that are within the requisite period are the Immunization Record, a copy of the Form I-94, and the letter from [REDACTED]

Of these documents, only the Immunization Record and the Form I-94 are credible evidence that the applicant was in the United States from 1985 onwards. The AAO will focus its review on the evidence submitted by the applicant to establish her continuous residence in the United States from before January 1, 1982 through the end of 1985.

The letter from [REDACTED] dated April 10, 2012, stating that the applicant has been a member of the church for over twenty-two years and that she served as a member of the usher department during that period does not comport with the regulatory requirements at 8 C.F.R. § 245a.2(d)(3)(v), which specifies that attestations by religious and related organizations (A) identify the applicant by name, (B) be signed by an official (whose title is shown), (C) show inclusive dates of membership, (D) state the address where the applicant resided during the membership period, (E) include the organization seal impressed on the letter or the letterhead of the organization, (F) establish how the author knows the applicant, and (G) establish the origin of the information about the applicant. The letter, which was signed by the secretary of the church, [REDACTED] and approved by the [REDACTED] did not indicate the specific period of the applicant's membership, did not indicate where the applicant lived at any time during her association with the church, did not specify how and when Mr. [REDACTED] met the applicant, and whether his information about the applicant was based on his personal knowledge, the Church's records, or hearsay. Since the letter did not comply with subparts (C), (D), (F), and (G) of 8 C.F.R. § 245a.2(d)(3)(v), the AAO finds that the letter has little probative value. It is not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through at least January 6, 1985, or for the entire duration of the requisite period.

While the applicant has submitted some credible evidence that she entered the United States in 1985 and most probably thereafter resided continuously through the end of the requisite period, she has failed to submit credible evidence to establish that she continuously resided in the United States from before January 1, 1982 through January 6, 1985.

The applicant's response has failed to overcome the evidentiary deficiencies noted in the NOID. Therefore, upon a *de novo* review of all of the evidence in the record, the AAO finds that the applicant has failed to establish that she continuously resided in the United States in an unlawful status for the requisite period required for legalization under the Act.

Accordingly, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence 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 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.