

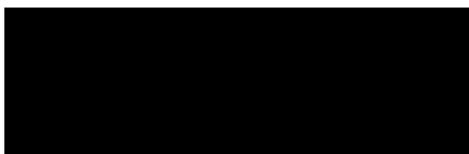
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



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DATE: **MAY 08 2012**

Office: MIAMI

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 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, Miami, Florida. 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 March 26, 2012, the AAO sent the applicant a notice informing the applicant of the inconsistencies and deficiencies in his application and providing him 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 of all absences has not exceeded one hundred eighty (180) days during the requisite period, unless

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.

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. Evidence of residence after May 4, 1988 is not probative of residence during the requisite time period, and shall not be discussed.

In the director's Notice of Intent to Deny (NOID) dated June 27, 2010, the director noted that the applicant had not established that he entered the United States prior to January 1, 1982 and that he resided continuously in the United States throughout the requisite period. The director gave the applicant 30 days to submit additional evidence in support of his application.

In response to the NOID, the applicant submitted a statement and in it he claims that he first entered the United States before January 1, 1982 and remained in the United States continuously in an unlawful manner since that time to present. The applicant claimed on his Form I-687 application that he resided in New York throughout the entire requisite period. The applicant also claims that he was self-employed in the United States as a daily laborer doing odd jobs.

On the applicant's class membership determination form, he claims that he first entered the United States with a non-immigrant visa on August 16, 1980, left the United States on June 26, 1987 and returned with a visa on August 6, 1987.

In a Form G-325, filed in conjunction with the applicant's Form I-485 application, and signed by him under the penalty of perjury, he stated that he resided in [REDACTED] from 1949 until December 2001.

The record contains a copy of the applicant's B1/B2 nonimmigrant visa issued in [REDACTED] on October 29, 2001. A Form I-265, Notice to Appear, Bond, and Custody Processing Sheet, dated June 13, 2005, indicates the applicant was admitted into the United States at New York City on December 25, 2001 as a non-immigrant visitor for pleasure until June 24, 2002. The evidence does not establish that the applicant entered the United States prior to January 1, 1982 and resided continuously in an unlawful manner throughout the requisite period. No evidence of record resolves these inconsistencies. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The documentation that the applicant submitted in support of his claim to have arrived in the United States before January 1, 1982 and lived in an unlawful status during the requisite period consists of affidavits from [REDACTED] and [REDACTED].

The affiants attest to knowing the applicant and generally knowing the applicant resided in the United States for all or a part of the requisite period. They attest to the applicant being a good worker and knowing the applicant tried to file for legalization but was turned away because he traveled outside the United States without permission. The affiants attest to the applicant's good moral character but fail to indicate any other details that would lend credence to their claimed acquaintance with the applicant and his residence in the United States during the requisite period. The affiants' statements are significantly lacking in detail concerning the events they shared with the applicant and do not establish that they actually had personal knowledge of the applicant's residence in the United States.

The affidavits submitted by the applicant are judged according to their probative value and credibility and not the quantity of declarations submitted by the applicant. 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. The AAO finds that the witness statements do not provide sufficient details. In the affidavits which are noted, the affiants did not sufficiently explain the facts stated in their affidavits and in some instances, the affiants did not explain how they gained the information about the stated facts. For the aforementioned reasons, the AAO finds that the witness statements can only be given nominal weight.

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 deficient in detail that they can only be given nominal probative value. USCIS is not required to contact affiants to verify the veracity of the testimony and to obtain additional evidence from the affiants. An applicant applying for adjustment of status under this part has the burden of proving by a preponderance of evidence that he or she is eligible for adjustment of status under section 245a of the Act. 8 C.F.R. § 245a.2(d)(5).

The letter signed by [REDACTED] states that he has known the applicant since 1981 and that the applicant participated in Friday congregations and offered his prayers regularly from 1981 to 1990. However, on the applicant's Form I-687, he does not claim to be affiliated with any organization. Further, the regulation at 8 C.F.R. § 245a.2(d)(3)(v) provides requirements for attestations made on behalf of an applicant by churches, unions, or other organizations. Attestations must (1) identify applicant by name; (2) be signed by an official (whose title is shown); (3) show inclusive dates of membership; (4) state the address where applicant resided during membership period; (5) include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; (6) establish how the author knows the applicant; and (7) establish the origin of the information being attested to. The letter does not state the applicant's address during the requisite period or establish the origin of the information provided.

The applicant responded to the AAO's notice of deficiencies in the record on April 17, 2012. The applicant submitted a letter stating that he entered the United States before January 1, 1982 and had been continuously physically present in the United States without any lawful status. The applicant states that all the affidavits are bona fide and genuine and that there are no inconsistencies too glaring as to tarnish the evidence. In the letter, the applicant states that he had to take help from different friends and well-wishers in filling out the different immigration forms and other papers. The applicant states in the letter that the person who filled out the Form G-325 did not understand the actual meaning of the form and erroneously stated the applicant resided in Bangladesh from 1949 to

December 2001 when it was actually 1949 to August 1980. However, the Form G-325 was signed by the applicant under the penalty of perjury on April 12, 2006 and the applicant has not provided any evidence to establish he entered the United States before January 1, 1982 and resided in a continuous unlawful status throughout the requisite period. The applicant also states in his letter and provides a copy of an offense/incident report that indicates the applicant's immigration papers were stolen on July 17, 2010 from his house. In his letter, the applicant claims that these immigration papers were sufficient to prove his eligibility for legalization. However, the applicant had the opportunity to include these immigration papers when he filed his application for temporary residence on October 27, 2005.

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.