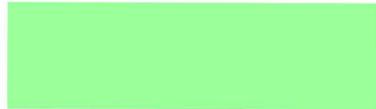




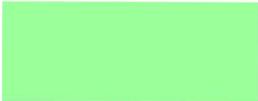
U.S. Citizenship
and Immigration
Services

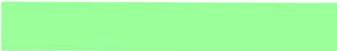
(b)(6)



DATE: NOV 10 2014

OFFICE: DETROIT

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:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
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) on January 23, 2004, and *Felicity Mary Newman, et al. v. United States Citizenship and Immigration Services, et al.*, CIV. NO. 87-4757-WDK (C.D. Cal) on February 17, 2004 (CSS/Newman Settlement Agreements), was denied by the Field Office Director (Director) in Detroit. The case is now on appeal before the Chief, Administrative Appeals Office (AAO). The appeal will be dismissed.

Applicants for temporary resident status under section 245A of the Immigration and Nationality Act (the Act) must establish their entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status from before January 1, 1982 through the date the application is filed. See section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2). Applicants must also establish their continuous physical presence in the United States since November 6, 1986. See 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 filing date of the application. See 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 the regulation at 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 from May 5, 1987 to May 4, 1988. See CSS Settlement Agreement, paragraph 11 at page 6; Newman Settlement Agreement, paragraph 11 at page 10.

An applicant for temporary resident status has the burden to establish by a preponderance of the evidence that he or she 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. See 8 C.F.R. § 245a.2(d)(5).

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.

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 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. The regulations provide an illustrative list of documents – which includes affidavits and “any other relevant document” – that an applicant may submit as evidence of continuous residence in the United States during the requisite period under section 245A of the Act. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

In this case the application for temporary resident status (Form I-687) was filed on January 3, 2006. On April 27, 2007, the director issued a Notice of Intent to Deny (NOID) the application on the grounds that the evidence of record did not establish (1) the applicant’s entry into the United States before January 1, 1982, or (2) the applicant’s continuous residence and continuous physical presence in the United States during the requisite time periods in the 1980s, or (3) that the applicant (or his spouse or parent) attempted to file an application for legalization between May 5, 1987 and May 4, 1988. The applicant was given 33 days to respond to the NOID with additional evidence.

The applicant did not respond to the NOID. Therefore, on September 5, 2007 the Director issued a decision denying the application for the reasons set forth in the NOID.

The applicant filed a timely Notice of Appeal (Form I-694). However, in the box on the appeal form directing the applicant to summarize the reasons for the appeal, the applicant did not identify any legal or factual errors in the Director’s denial decision. While claiming that he needed permission to stay in the United States so that he could keep working and support his family, the applicant acknowledged that he had no documentation from prior to 1998, and thus no further evidence of his asserted entry into the country, continuous residence, continuous physical presence, and attempted application for legalization during the 1980s.

The regulation at 8 C.F.R. § 103.3(a)(3)(iv)(A) provides that “[a]ny appeal which is filed that [f]ails to state the reason for appeal . . . or is patently frivolous will be summarily dismissed.”

In this case the applicant has not identified any erroneous conclusion of law or any erroneous statement of fact in the director’s decision. The applicant has not submitted any additional evidence to be considered on appeal. In accordance with the provisions of 8 C.F.R. § 103.3(a)(3)(iv)(A), therefore, the appeal will be summarily dismissed.

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