



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF L-C-N-

DATE: AUG. 25, 2016

APPEAL OF NEWARK, NEW JERSEY FIELD OFFICE DECISION

APPLICATION: FORM I-687, APPLICATION FOR STATUS AS A TEMPORARY RESIDENT
UNDER SECTION 245A OF THE IMMIGRATION AND NATIONALITY
ACT

The Applicant, a native and citizen of Nigeria, seeks status as a temporary resident. See Immigration and Nationality Act (the Act) section 245A, 8 U.S.C. § 1255a and the settlement agreements 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). The Immigration Reform and Control Act of 1986 created a legalization program under section 245A of the Act, which allows eligible foreign nationals who entered the United States before January 1, 1982, and who continuously resided and were physically present in the United States during specified time periods, to adjust status to temporary residence, if they are admissible to the United States and have not been convicted of a felony or three or more misdemeanors in the United States. The application period for temporary resident status ended on May 4, 1988. However, under the terms of the CSS/Newman Settlement Agreements, eligible individuals who did not apply for legalization during the initial application period for certain specific reasons may also adjust status to temporary residence.

The Field Office Director, Newark, New Jersey, denied the application.¹ The Director concluded that the Applicant did not establish that he was in unlawful status, on or before, January 1, 1982. The Applicant appealed the Director's decision, and we issued a Notice of Intent to Dismiss (NOID), advising the Applicant of our intent to dismiss his appeal unless he could establish continuous residence during the requisite periods. We also determined that the Applicant was inadmissible for misrepresentation under section 212(a)(6)(C)(i) of the Act because he entered the United States with a nonimmigrant visa in 1980 with an intent to reside in the United States permanently. In the NOID, we also requested that the Applicant file a Form I-690, Application for Waiver of Grounds of Inadmissibility. The National Benefits Center subsequently denied the waiver application. On May 15, 2015, the denial was withdrawn, and the Form I-690 was reopened.

¹ The Director initially denied the Applicant's class membership because the Applicant did not list any foreign travel after January 1, 1982, on the Form I-687 and because he testified that he never left the United States after his entry in 1980. The Special Master determined that the Applicant was a class member because he stated on the class membership worksheet that his timely legalization application was rejected based on unauthorized travel outside the United States in 1987.

In his response to the NOID, the Applicant submits additional evidence and claims he has established continuous unlawful residence during the requisite period.

Upon *de novo* review, we will remand the matter to the Field Office Director, Newark, New Jersey, for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

I. LAW

The Applicant is seeking to adjust status to that of a temporary resident. Section 245A of the Act provides:

(a) Temporary Resident Status.-The [Secretary of Homeland Security] shall adjust the status of an alien to that of an alien lawfully admitted for temporary residence if the alien meets the following requirements:

(2) Continuous unlawful residence since 1982.-

(A) In general.-The alien must establish that he entered the United States before January 1, 1982, and that he has resided continuously in the United States in an unlawful status since such date and through the date the application is filed under this subsection.

(B) Nonimmigrants.-In the case of an alien who entered the United States as a nonimmigrant before January 1, 1982, the alien must establish that the alien's period of authorized stay as a nonimmigrant expired before such date through the passage of time or the alien's unlawful status was known to the Government as of such date.

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(3) Continuous physical presence since enactment.-

(A) In general.-The alien must establish that the alien has been continuously physically present in the United States since the date of the enactment of this section.

(B) Treatment of brief, casual, and innocent absences.- An alien shall not be considered to have failed to maintained continuous physical presence in the United States for purposes of subparagraph (A) by virtue of brief, casual, and innocent absences from the United States.

(C) Admissions.-Nothing in this section shall be construed as authorizing an alien to apply for admission to, or to be admitted to, the United States in order to apply for adjustment of status under this subsection.

(4) Admissible as immigrant.-The alien must establish that he-

(A) is admissible to the United States as an immigrant, except as otherwise provided under subsection (d)(2),

(B) has not been convicted of any felony or of three or more misdemeanors committed in the United States,

(C) has not assisted in the persecution of any person or persons on account of race, religion, nationality, membership in a particular social group, or political opinion, and

(D) is registered or registering under the Military Selective Service Act, if the alien is required to be so registered under that Act.

For purposes of this subsection, an alien in the status of a Cuban and Haitian entrant described in paragraph (1) or (2)(A) of section 501(e) of Public Law 96-422 shall be considered to have entered the United States and to be in an unlawful status in the United States.

The Applicant has the burden of proving by a preponderance of credible 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 regulations at 8 C.F.R. § 245a.2(d) provide:

(5) *Burden of proof.* An alien applying for adjustment of status under this part 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 under this section. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification as set forth in paragraph (d) of this section.

(6) *Evidence.* The sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony. In judging the probative value and credibility of the evidence submitted, greater weight will be given to the submission of original documentation.

II. ANALYSIS

The issues in these proceedings are whether the Applicant established that he entered the United States before January 1, 1982, and that he has resided continuously in the United States in an unlawful status since such date and through the date the application is filed.

A. Continuous residence in an unlawful status since January 1, 1982

As stated above, an applicant for temporary residence 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. 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 the above by a preponderance of the evidence. 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).

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’r 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.* at 80. 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, 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.

The Applicant has submitted the following evidence to establish that he entered the United States before January 1982 and continuously resided in the United States in an unlawful status through May 4, 1988:

- A Form I-94 indicating arrival into the United States in January 1980 with an F-1 visa and authorization to remain in the United States until December 1981. There is no evidence in the record to indicate that the Applicant had any lawful immigration status after the expiration of his F-1 status date.
- Undergraduate university records indicating attendance from spring 1977 to graduation in December 1980

(b)(6)

Matter of L-C-N-

- A Social Security Administration statement indicating income from 1981 through 2005
- Graduate university records indicating attendance during the following semesters: fall 1982 and summer 1988 through summer 1989
- A letter from a California government agency stating that the Applicant was employed at the agency from January 1987 through October 1990.

We find that official government documentation and schools record establish that the Applicant continuously resided in the United States during the requisite period.

B. Continuous physical presence since November 6, 1986, through the date of the application

The Applicant must also establish that he or she has been continuously physically present in the United States since November 6, 1986. 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)(2).

In our NOID, we determined that the record lacked sufficient evidence of continuous residence for the years 1985 through 1988. We also found inconsistencies in the documentation regarding Applicant's employment between 1987 and 1990. In response to the NOID, the Applicant submitted the following evidence:

- Federal and California state tax returns for 1987,
- A Form W-2, Wage Statement and Tax statement for 1988, and
- Graduate university records indicating attendance during the fall 1982 and summer 1988 through summer 1989 semesters.

Here, Social Security Administration documentation establishes that the Applicant was continuously present in the United States from 1981 to 2005. State employment documentation and state tax documentation indicate that the Applicant was present from 1987 to 1989. Further, school records establish that the Applicant was present from 1988 through 1989. We find that the evidence submitted with the Form I-687 and the appeal support a finding that that the Applicant has been continuously physically present in the United States since November 6, 1986. Accordingly, the Applicant has demonstrated that he was continuously physically present in the United States during the statutory period.

C. Inadmissibility

We previously determined that the Applicant was inadmissible for misrepresentation under section 212(a)(6)(C)(i) of the Act because he entered the United States with a nonimmigrant visa in 1980 with an intent to reside in the United States permanently. However, the record reflects that the Applicant complied with the purpose of the admission and attended the [REDACTED] until graduation. Therefore, based upon a further review, we are withdrawing our finding with respect to the Applicant's inadmissibility under section 212(a)(6)(C)(i) of the Act.

Matter of L-C-N-

We find that the Applicant has demonstrated that he is eligible for status as a temporary resident. However, we cannot sustain the appeal at this time, as the Applicant's Form I-690 remains open. We are therefore remanding the matter to the Field Office Director, Newark, New Jersey, for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

III. CONCLUSION

The Applicant has the burden of proving eligibility for status as a temporary resident. Section 291 of the Act, 8 U.S.C. § 1361. The Applicant has met that burden.

ORDER: The decision of the Field Office Director, Newark, New Jersey is withdrawn. The matter is remanded to the Field Office Director, Newark, New Jersey, for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

Cite as *Matter of L-C-N-*, ID# 18464 (AAO Aug. 25, 2016)