

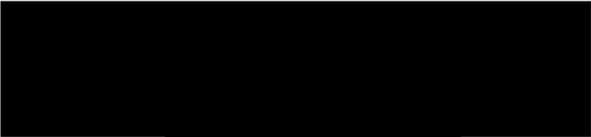


U.S. Citizenship
and Immigration
Services

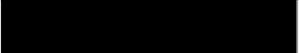
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FILE:



Office: NEW YORK

Date: AUG 08 2007

MSC-05-137-10419

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. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

Robert P. Wieman, 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, New York. The decision is now before the Administrative Appeals Office (AAO) on appeal. Portions of the decision will be withdrawn. The appeal will be dismissed.

The applicant 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 February 14, 2005. The director determined that the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status for the requisite period, specifically noting that only one affidavit was submitted in support of the applicant's claim. The director denied the application as the applicant had not met his burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

The director's decision also noted that the applicant had failed to provide any tangible evidence or credible documentation in support of his claim, such as receipts, medical invoices, school records, utility bills, pay stubs or other such documentation issued during the statutory time frame and had therefore failed to demonstrate by a preponderance of the evidence that he was eligible for legalization pursuant to 8 C.F.R. § 245a. The director also found the applicant ineligible for legalization due to his absence from the United States from January 1988 until 1997, stating that that absence "represents a clear break in residency as it is far in excess of a single absence of 45 days during the statutory period from January 1, 1982 until May 4, 1988."

On appeal, the applicant asserts that he resided in the United States as required and that "the statement that [he] left the United States in January 1988, and did not return until the year 1997 . . . was a misunderstanding." He did not submit any additional documentation.

The AAO notes that, as a class member under the CSS/Newman Settlement Agreements, the applicant is not required to prove entry and residence in the United States with contemporaneous documents from the relevant time period; that portion of the decision regarding a requirement for such "tangible evidence" will be withdrawn. The AAO also notes that an applicant for temporary residence under the CSS/Newman Settlement Agreements is not required to maintain residency for the "statutory period from January 1, 1982 until May 4, 1988;" that portion of the decision regarding residence will also be withdrawn. However, the director correctly denied the I-687 application because the one document submitted was not sufficient evidence of the applicant's entry into and residence in the United States during the requisite period.

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 from November 6, 1986 until the date of filing. Section 245A(a)(3) of the Act, 8 U.S.C. § 1255a(a)(3).

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), **“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.** 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. See 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).

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 credibility of an affidavit may be assessed by taking into account such factors as whether the affiant provided a copy of a recognized identity card, such as a driver’s license; whether the affiant provided some proof that he or she was present in the United States during the requisite period; and whether the affiant provided a valid telephone number. 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 applicant has furnished sufficient credible evidence to establish his continuous unlawful residence and continuous physical presence in the United States for the requisite periods. Here, the submitted evidence consists of one affidavit, which is not relevant, probative and credible. As for the applicant's assertion on appeal that his statement regarding absence from the United States from 1988 until 1997 "was a misunderstanding," the AAO finds that, as explained above, his absence during those years is not relevant to establishing eligibility for temporary residence under the CSS/Newman Settlement Agreements. It is clear from the record, however, that the applicant claimed on his Form I-687 application and confirmed during his interview with U.S. Citizenship and Immigration Services on February 7, 2006, that he resided outside the United States during that time period.

Regarding residence in the United States during the requisite period, the record contains one signed and notarized statement, dated March 8, 2006. The affiant certifies that he has known the applicant since 1986 and that the applicant used to live near him. The affiant provides his address and telephone number. The statement is not accompanied by any identification or evidence that the affiant resided in the United States during the requisite period and it lacks any details of his relationship with the applicant. Moreover, it refers only to a time period since 1986, with no mention of the applicant's entry into or residence in the United States before that time. Given its lack of detail and relevance, the statement is neither probative nor credible.

The one affidavit, along with the applicant's own statements, comprise the only documentation provided by the applicant as evidence of his residence in the United States for the requisite period. This evidence is insufficient to support a conclusion that the applicant entered the United States before 1982 and resided in the United States for the requisite period. The record lacks any document that might lend credibility to the applicant's claim of entry and residence in the United States for the required time period.

The absence of sufficiently detailed supporting documentation to corroborate the applicant's claim of continuous residence for the entire requisite period detracts from the credibility of his claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the paucity of credible supporting documentation and the applicant's reliance upon one affidavit, a document with minimal probative value, it is concluded that he has failed to meet his burden of proof and failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application, 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. Portions of the decision, noted *supra*, will be withdrawn. The appeal will be dismissed.

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