



U.S. Citizenship
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FILE:

MSC-05-236-15125

Office: NEW YORK

Date: **AUG 30 2007**

IN RE:

Applicant:

APPLICATION:

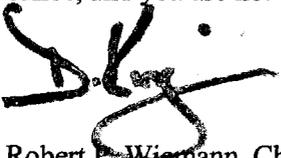
Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

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. Wiemann, 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, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined the applicant failed to provide any tangible or credible documentation to attest to his claimed presence in the United States during the statutory time frame of January 1, 1982 through May 4, 1988. As a result, the director denied the application.

On appeal, the applicant attempted to explain the lack of documentation in support of his application.

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 Immigration and Nationality Act (Act), 8 U.S.C. § 1255a(a)(2).

An applicant for adjustment to temporary resident status must 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).

For purposes of establishing residence and 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, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

An applicant for adjustment of status 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 and 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).

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 petitioner 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 demonstrate that he resided in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application with the Immigration and Naturalization Service (INS) in the original legalization application period of May 5, 1987 to May 4, 1988. Here, the submitted evidence is not relevant, probative, and credible.

The record shows that the applicant submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to Citizenship and Immigration Services (CIS) on May 24, 2005. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant listed the following addresses in New York, New York during the requisite period: [REDACTED] to June 1986, and [REDACTED] from June 1986 to 1993. The applicant initially submitted no supporting documentation with his I-687 application.

In response to a Notice of Intent to Deny Application for Status as a Temporary Resident issued on November 15, 2005, the applicant submitted the affidavit of [REDACTED] dated December 6, 2005. In this affidavit, [REDACTED] stated that she met the applicant in October 1984, and that the applicant used to be a friend of the affiant's mother and "always came around and gave [the affiants] gifts all the time." The affiant did not confirm the applicant's residence in the United States for any specific portion of the requisite period. In addition, the affiant failed to confirm that the applicant resided in the United States prior to January 1, 1982.

In his interview with an immigration officer on March 22, 2006, the applicant stated that he first entered the United States in January 1981. This statement appears to be inconsistent with the applicant's statement on Form I-687 indicating he first began residing in the United States in October 1981. This apparent inconsistency calls into question whether the applicant actually resided in the United States since prior to January 1, 1982.

In response to a second Notice of Intent to Deny (NOID) issued on March 23, 2006, the applicant provided an additional affidavit from [REDACTED] dated April 6, 2006. In this affidavit, [REDACTED] confirmed that she has known the applicant since October 1984. [REDACTED] explained that she saw the applicant "almost daily" because he was a close friend of the affiant's mother, and the affiant provided

the address in New York where her mother had been living during the requisite period. The affiant failed to specifically confirm the applicant resided in the United States throughout the requisite period.

In denying the application, the director explained that the only document the applicant had submitted was the affidavit from [REDACTED]. The director also indicated that numerous attempts were made to contact [REDACTED] and were unsuccessful. In addition, the director mentioned that the affiant had only confirmed knowledge of the applicant since 1984. The director also provided a list of items that are considered to be credible documentation. The director found that the applicant had failed to provide any tangible evidence or credible documentation to attest to his claimed presence in the United States during the statutory time frame of January 1, 1982 through May 4, 1988. The director found the applicant had failed to prove by a preponderance of the evidence that he 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. As a result, she denied the application.

On appeal, the applicant explained that he was in hiding from the authorities during the requisite period, so he always paid rent and utilities through another person. As a result, the only documents the applicant could provide were affidavits from acquaintances.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period and has submitted two affidavits from the same affiant that confirm knowledge of the applicant only since 1984. The applicant submitted no documentation confirming that he resided in the United States since before January 1, 1982 through 1984. In addition, the applicant's statements on Form I-687 appear to be inconsistent with his statements in the interview with the immigration officer.

The absence of sufficiently detailed and consistent supporting documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of this 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 contradictory statements contained in the applicant's I-687 application and record of his interview with an immigration officer, and given the applicant's reliance upon documents with minimal probative value, it is concluded that he has 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.

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