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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

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FILE:

[Redacted]  
MSC-05-209-10231

Office: NEW YORK

Date:

DEC 05 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.

A handwritten signature in black ink, appearing to read "D. King" or similar, written over a horizontal line.

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 that decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that he attempted to file a Form I-687, Application for Status as a Temporary Resident, with the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS) in the original legalization application period of May 5, 1987 to May 4, 1988. Specifically, the director noted that at the time of his interview with a Citizenship and Immigration Services (CIS) officer on November 30, 2005, the applicant testified that he left the United States in 1987 and did not return until 1990. The director found that this constituted a break in the applicant's residency during the requisite period. Therefore, the director determined that the applicant was not eligible to adjust to Temporary Resident Status pursuant to the terms of the CSS/Newman Settlement Agreements and denied the application.

In this case, the director adjudicated the Form I-687 application on the merits. As a result, the director is found not to have denied the application for class membership.

On appeal, the applicant submits a Form I-694, Notice of Appeal of Decision and with it he submits four (4) new affidavits 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 applying 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) and 8 C.F.R. § 245a.2(b)(1).

Applicants who are eligible for adjustment to Temporary Resident Status are those who establish that they entered the United States prior to January 1, 1982, and who have thereafter resided continuously in the United States in an unlawful status, and who 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).

An 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 between January 1, 1982 and the

date of filing his or her application for Temporary Resident Status unless the applicant establishes 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).

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 alien 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, 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 applying 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, 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. 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 Service 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 CIS on April 27, 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 showed his first address in the United States during the requisite period to be [REDACTED], New York from 1981 until 1987. It is noted that the applicant did not show another residence until 1990. At part #32, where the applicant was requested to list all of his absences from the United States since January 1, 1982, he showed he was never absent from the United States. At part #33 of his application, where the applicant was asked to list his employment since entering the United States, he showed he was employed as a street vendor. Here, the applicant did not associate dates with this employment and showed his address of employment only as, "New York."

The record shows that at the time of his interview with a Citizenship and Immigration Services (CIS) officer on November 30, 2005, the applicant stated that he left the United States in 1987 and did not re-enter until 1990. He also stated that he resided at [REDACTED] in New York from 1981 until 1988, contradicting his previous statement that he left in 1987.

The applicant has the burden of proving by a preponderance of the evidence that he has resided in the United States for the requisite period. 8 C.F.R. § 245a.2(d)(5). To meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. 8 C.F.R. § 245a.2(d)(6). The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that an applicant may submit to establish proof of continuous residence in the United States during the requisite period. This list includes: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts or letters. An applicant may also submit any other relevant document pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

Here, the applicant did not submit any documents other than his own testimony to meet his burden.

In denying the application the director noted that the testimony given by the applicant at the time of his interview indicated that the applicant had disrupted his continuous residence.

As was noted above, an 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 between January 1, 1982 and the date of filing his or her application for Temporary Resident Status unless the applicant establishes 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).

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 alien 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, 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.

Therefore, the applicant's 1987-1990 absence falls after the applicant's date of filing. However, as was noted above, to meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. 8 C.F.R. § 245a.2(d)(6). Here the applicant failed to submit evidence apart from his own testimony to meet this burden.

On appeal the applicant attempts to meet his burden of proof of establishing that he has resided in the United States for the duration of the requisite period by submitting four (4) affidavits.

New evidence submitted by the applicant in support of his application are as follows:

- An affidavit from [REDACTED] that is dated October 6, 2005. Here, the affiant states that he knows that the applicant resided in New York from July of 1981 until July of 1987. Here, he indicates that the longest period of time he has not seen the applicant for is nineteen (19) years. He does not associate dates with this period of time. Though the affiant has indicated that he met the applicant when he was looking for vendor work, he does not indicate where or when this meeting occurred. He does not indicate the frequency with which he saw the applicant during the requisite period. He fails to indicate an address at which he or the applicant resided during the requisite period. Further, though not required to do so, he fails to provide proof of his identity or proof that he himself resided in the United States during the requisite period. No contact information has been provided with this affidavit. Therefore, it is not amenable to verification. Because of this affidavit's significant lack of detail, it can be afforded little weight in establishing that the applicant continuously resided in the United States for the duration of the requisite period.
- An affidavit from [REDACTED] dated September 27, 2005. Here, the affiant states that he knows the applicant resided in the United States from July of 1981 until August of 1987. Here, he indicates that the longest period of time he has not seen the applicant for is fifteen (15) years. He does not associate dates with this period of time. Though the affiant has indicated that he met the applicant when he was looking for vendor work, he does not indicate where or when this meeting occurred. He does not indicate the frequency with which he saw the applicant during the requisite period. He fails to indicate an address at which he or the applicant resided during the requisite period. Further, though not required to do so, he fails to provide proof of his identity or proof that he himself resided in the United States during the requisite period. No contact information has been provided with this affidavit. Therefore, it is not amenable to verification. Because of this affidavit's significant lack of detail, it can be afforded little weight in establishing that the applicant continuously resided in the United States for the duration of the requisite period.

- An affidavit from [REDACTED] dated October 5, 2005. Here, the affiant states that he knows the applicant resided in the United States from July of 1981 until July of 1987. Here, he indicates that the longest period of time he has not seen the applicant for is twenty-three (23) years. He does not associate dates with this period of time. Though the affiant has indicated that he met the applicant when he was looking for vendor work, he does not indicate where or when this meeting occurred. He does not indicate the frequency with which he saw the applicant during the requisite period. He fails to indicate an address at which he or the applicant resided during the requisite period. Further, though not required to do so, he fails to provide proof of his identity or proof that he himself resided in the United States during the requisite period. No contact information has been provided with this affidavit. Therefore, it is not amenable to verification. Because of this affidavit's significant lack of detail, it can be afforded little weight in establishing that the applicant continuously resided in the United States for the duration of the requisite period.
- An affidavit from [REDACTED] dated November 2, 2005. Here, the affiant states that he knows the applicant resided in New York from July of 1981 to August of 1987. Here, he indicates that the longest period of time he has not seen the applicant for is twenty (20) years. He does not associate dates with this period of time. Though the affiant has indicated that he met the applicant when he was looking for vendor work, he does not indicate where or when this meeting occurred. He does not indicate the frequency with which he saw the applicant during the requisite period. He fails to indicate an address at which he or the applicant resided during the requisite period. Further, though not required to do so, he fails to provide proof of his identity or proof that he himself resided in the United States during the requisite period. No contact information has been provided with this affidavit. Therefore, it is not amenable to verification. Because of this affidavit's significant lack of detail, it can be afforded little weight in establishing that the applicant continuously resided in the United States for the duration of the requisite period.

As is stated above, 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). The applicant has been given the opportunity to satisfy his burden of proof with a broad range of evidence pursuant to 8 C.F.R. § 245a.2(d)(3). However, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period, and has submitted attestations from four (4) people concerning that period, none of which is amenable to verification.

The absence of sufficiently detailed 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 applicant's reliance upon documents that are not amenable to verification

and that have 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.