



U.S. Citizenship
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[REDACTED]

FILE: [REDACTED]
MSC-05-147-10035

Office: INDIANAPOLIS, IN Date: DEC 17 2007

IN RE: Applicant: [REDACTED]

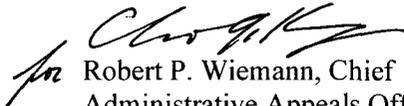
APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the
Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:

[REDACTED]

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, Indianapolis, Indiana, 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 the evidence provided by the applicant did not allow him to prove by a preponderance of the evidence that he had entered the United States before January 1, 1982 and then resided continuously for the duration of the requisite period. The director further found that the applicant did not submit sufficient evidence to establish that he was continuously physically present in the United States from November 6, 1986 until he attempted to apply for legalization during the original filing 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.

On appeal, the applicant asserts that the director erred in his decision as he did not question the quality of the evidence submitted by the applicant but rather noted the quantity of evidence submitted by the applicant in his decision. He goes on to say that the director should have evaluated the evidence in terms of its probative value and credibility to determine whether the applicant met the preponderance of the evidence standard.

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 also 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 he or she 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 to that of a Temporary Resident 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* 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 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 February 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 showed his first address in the United States during the requisite period to be: [REDACTED] in New York City where he lived from November 1981 to February 1988. He then showed he lived at [REDACTED] in Greensboro, North Carolina from February 1988 until December 1997. At part #33, where the applicant was asked to list all of his employment since first entering the United States, he showed that he was self-employed as a vendor on Broadway in New York City from 1981 to 1997. It is noted here that the applicant indicated that he lived in North Carolina from February of 1988 until 1997, yet he indicates he continued to work in New York City. It is further noted that the applicant's address in Greensboro, North Carolina is approximately five hundred forty (540) miles from Broadway in New York and would take more than nine (9) hours to travel to each way.

The applicant has also submitted his own affidavit in support of his application. In this affidavit, he states that he entered the United States in approximately November 1981 and then resided in New York City until February of 1988. He goes on to say that he made a living as a street vendor and that all of his transactions were in cash. He states that he met [REDACTED] while he was vending in New York in April of 1982. He goes on to say that he moved to Greensboro, North Carolina after leaving New York and that he worked as a vendor at that time. He does not specify where this work occurred. He asserts that as all of his bills were paid in cash, he has no receipts pertaining to the requisite period. He further states that he has lost contact with many of the people he knew during the requisite period.

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).

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided his own statement, previously noted, and a photocopy of an affidavit from [REDACTED]

The photocopy of the affidavit from [REDACTED] is not dated. It indicates that she met the applicant in April of 1982 because they were both street vendors who worked near each other. She states that the applicant sold jewelry and she sold socks and T-shirts. She goes on to say that the applicant sometimes came to visit her at her house. She indicates that she and the applicant still talk approximately once a month. Here, the affiant fails to indicate how often she saw the applicant during the requisite period. She does not provide an address at which she personally knows that the applicant lived at that time, nor does she offer evidence that she herself resided in the United States for the duration of the requisite period. Further, as the affiant states that she did not meet the applicant until April of 1982, this affidavit does not establish that the applicant resided in the United States prior to that date. Therefore, this affidavit does not carry any weight in establishing that the applicant entered the United States on a date that was prior to January 1, 1982 and then resided continuously in the United States for the duration of the requisite period.

It is noted here that the applicant bears the burden of proving by a preponderance of the evidence that he is eligible to apply for legalization pursuant to the regulation at 8 C.F.R. § 245a.2(d)(5). To establish that an applicant is eligible to apply for legalization he must prove that he entered the United States prior to January 1, 1982 pursuant to the regulation at 8 C.F.R. § 245a.2(b)(1). To meet an applicant's burden of proof, he must submit evidence of eligibility part from his own testimony pursuant to the regulation at 8 C.F.R. § 245a.2(d)(6). Here, the only evidence apart from the applicant's own testimony that he has submitted is the affidavit from [REDACTED]. This affidavit does not establish that the affiant knew him prior to January 1, 1982. She cannot verify that he was residing in the United States prior to April of 1982. Therefore, the applicant has not provided evidence apart from his own testimony that establishes that he entered the United States prior to January 1, 1982. Therefore, pursuant to the regulation at 8 C.F.R. § 245a.2(d)(6) he has not satisfied his burden of proof.

Thus, on the application, which the applicant signed under penalty of perjury, he showed that he resided and worked in the United States since November of 1981. The only evidence submitted with the application that is relevant to the 1981-88 period in question showed the applicant worked from April 1982 to February of 1988. This evidence does not establish that the applicant entered the United States before January 1, 1982.

In denying the application, though the director did not provide a detailed explanation as to why his office did so, he stated that his office found the evidence submitted by the applicant insufficient to establish that he was eligible to adjust status to that of a Temporary Resident.

On appeal, the applicant's attorney submits a memorandum asserting that the director did not afford sufficient weight to the evidence submitted by the applicant. He asserts that the director did not determine that the applicant was not credible, but referred only to the quantity of the evidence and did not evaluate its quality. He argues that the director did not decide the applicant's case at the preponderance of the evidence standard as he did not examine each piece of evidence and make his determination based on whether the evidence submitted, either by itself or when viewed within its totality, established that the applicant's claim of having resided continuously in the United States for the duration of the requisite period was probably true.

As noted above, the director did not provide a detailed analysis of his evaluation of each piece of evidence. However, because the applicant has not submitted any evidence apart from his own testimony that establishes that he maintained continuous residency in the United States for the duration of the requisite period, it is found that the director did not err in determining that the applicant did not meet his burden of proof with the evidence that he submitted in support of his application.

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. at 79-80. 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, here, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period, and has submitted an attestation from only one (1) person concerning only part of that period. He did not submit any additional evidence to establish that he had maintained continuous residence in the United States with his appeal.

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 one (1) document that does not span the duration of the requisite period, 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.