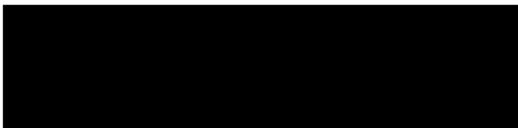




U.S. Citizenship
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FILE: [Redacted]
MSC-06-097-14870

Office: NEW YORK

Date: DEC 17 2007

IN RE: Applicant: [Redacted]

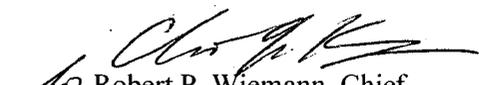
APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:

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. The decision is now before the Administrative Appeals Office (AAO) on appeal. 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 January 5, 2006. The director determined that the applicant had not established by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status for the duration of the requisite period. Specifically, the director noted that the applicant submitted only two (2) documents attesting to his presence in the United States prior to January 1, 1982, both of which were from correspondence course based schools. The director found that this and other evidence in the record did not allow the applicant to meet his burden of proof. Therefore, she determined that he was not eligible to adjust to Temporary Resident Status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, the applicant submits a new letter from a correspondence school from which he previously submitted documents.

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 since November 6, 1986. Section 245A(a)(3) of the Act, 8 U.S.C. § 1255a(a)(3). 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)(1).

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)(1), "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. 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 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 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 January 5, 2006. 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 only address in the United States during the requisite period to be [REDACTED] in the Bronx, New York where he lived from July 1983 until June 1991. At part #33 of his application, where the applicant was asked to list all employment in the United States since he first entered, he showed that he was a self-employed house cleaner. The applicant did not associate dates or an address with this employment.

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 the following:

- A Certificate of License from T [REDACTED] North Carolina that indicates that the applicant was awarded this license on December 1, 1986. It is noted here that the applicant has not indicated that he was living in North Carolina in 1986 on his Form I-687. As this certificate is from a correspondence school, documentation showing that the applicant completed a course by this institution does not establish that he resided in the United States. As such, this document carries no weight in establishing that the applicant continuously resided in the United States for the duration of the requisite period.

- A photocopy of a Certificate from Searchlight Bible School stating that the applicant completed a correspondence course from that school on October 3, 1979. Because this certificate is for a correspondence school located in Colorado, it does not establish that the applicant resided in the United States at the time he took the correspondence course it is associated with. Therefore, it carries no weight in establishing that the applicant continuously resided in the United States for the duration of the requisite period.
- A letter from the Apostolic Church of God Seventhday which is not dated. This letter asserts that the applicant has attended this church for "some time." The regulation at 8 C.F.R. § 245a.2(d)(3)(v) states in pertinent part that attestations by churches can be considered credible proof of residence if such documents: identify the applicant by name; are signed by an official whose title is shown; show inclusive dates of membership; state the address where the applicant resided during his or her membership period; include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationary; establish how the author knows the applicant; and establish the origin of the information being attested to. This letter fails to indicate the applicant's dates of membership in this church. It further fails to list an address at which the applicant resided during the requisite period. Because this letter is lacking in detail and because it does not establish that the applicant attended this church during the requisite period, it carries no weight in establishing that the applicant resided continuously in the United States for the duration of the requisite period.

Thus, on the application, which the applicant signed under penalty of perjury, he showed that he resided in the United States since July of 1983. The only evidence submitted with the application that is relevant to the 1981-88 period in question is from correspondence schools. Therefore, this evidence does not establish the applicant's residence in the United States.

In denying the application the director noted the above, and stated that that the applicant failed to meet his burden of establishing by a preponderance of the evidence that he resided continuously in the United States for the duration of the requisite period.

On appeal the applicant submits an additional letter from Searchlight Bible Correspondence School in Denver, Colorado. Details of this new evidence are as follows:

- In a letter, dated June 21, 2006, on letterhead from the Bible Advocate Press, [REDACTED] states that the applicant did complete a course with the school and was awarded a diploma from them on October 3, 1979. Here, Mr. [REDACTED] does not state that he has personal knowledge that the applicant resided at an address in the United States either before January 1, 1982 or at any other time during the requisite period. He goes on to say that the applicant's address of record at the time he was awarded the diploma was [REDACTED] in Bronx, New York. It is noted here that the applicant stated on his Form I-687 that this was his address of residence from July of 1983. He did not indicate that he lived at this address prior to that date. Therefore, because this document is not consistent with what the applicant showed on his Form I-687, doubt is cast on this document as proof that the applicant resided in the United States since before January 1, 1982. Because of this, this new letter carries very minimal weight in establishing that the applicant entered the United States before January 1, 1982.

Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the

petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

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, this applicant has not submitted any documents in which employers, friends or other individuals have stated that they are personally aware that he has resided continuously in the United States for the duration of the requisite period. He has further failed to provide any contemporaneous evidence of residence in the United States relating to the 1981-88 period. Though he submitted additional evidence on appeal, this evidence is not consistent with other evidence in the record and therefore it does not allow the applicant to meet his burden of proving that he resided in the United States for the duration of the requisite period by a preponderance of the evidence.

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 with minimal probative value that do not pertain to 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.