



U.S. Citizenship  
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Services

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LA

FILE: [REDACTED]  
MSC-05-165-10036

Office: NEW YORK

Date: DEC 17 2007

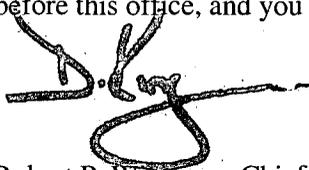
IN RE: Applicant: [REDACTED]

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 March 14, 2005. 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. The director denied the application, finding that 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.

On appeal, the applicant states that he submitted one affidavit addressing his presence in the United States, and is submitting another affidavit on appeal that also addresses his presence.

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).

For purposes of establishing residence and physical presence under the CSS/Newman Settlement Agreements, the term "until the date of filing" in 8 C.F.R. § 245a.2(b)(1) means until the date the applicant 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. See CSS Settlement Agreement paragraph 11 at page 6, and 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 period, 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).

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 for the duration of the requisite period. Here, the submitted evidence is not relevant, probative, and credible.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on March 14, 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 to have been [REDACTED] New York, New York, from February of 1981 to September of 1997. Similarly, at part #33, he showed his first employment in the United States to have been that of a self-employed street vendor in New York from February of 1981 to September of 1997.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided an affidavit from [REDACTED] in which he stated that he is a citizen of the United States and that he has known the applicant since 1981. The affiant lists the applicant's address as being [REDACTED] New York, New York, from November of 1981 to September of 1997. The affiant further stated that he has known the applicant for many years, that he sees the applicant from time to time, and that the applicant is a hard working man and a good person. The affiant submitted a photocopy of his New York State Identification Card issued to him on February 2, 2000. Here, the affiant fails to specifically state when he met the applicant, where he met the applicant, under what circumstances he met the applicant, and whether he met him in the United States. The affiant has not provided evidence that he himself was present in the United States during the requisite period. Although Mr. [REDACTED] attested to the applicant's residence in this country since 1981, he failed to provide any independent relevant and verifiable evidence to corroborate the applicant's claim of residence in the United States from prior to January 1, 1982. Because this affidavit is significantly lacking in detail it can only be accorded minimal weight in establishing that the applicant resided in the United States during the requisite period.

The director issued a Notice of Intent to Deny (NOID) dated February 10, 2006, to the applicant. The director stated in the NOID that the affidavit from [REDACTED] that was submitted by the applicant was not corroborated by any other evidence in the record, and that it was not credible. In response to the NOID, the applicant provided a statement in which he stated that he traveled to Africa in 1986 to visit his family and took all of his documents with him. He further stated that he left his documents behind upon returning to the United States, and that by the time he contacted his family in Africa, the documents had already been lost. The applicant concludes by stating that he submitted an affidavit from his friend [REDACTED] and provides his contact numbers.

In denying the application the director determined that the applicant had not met submitted sufficient evidence to meet 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.

On appeal, the applicant states that he submitted an affidavit from [REDACTED] in an effort to establish his presence in the United States, and submits an affidavit from [REDACTED], Mr. [REDACTED] girl friend, to prove the same. The applicant provides a telephone number for [REDACTED]

In an attempt to establish his continuous unlawful residence in this country prior to January 1, 1982, the applicant submitted an affidavit from [REDACTED] in which she states that she has known the applicant for many years and that his address from February of 1981 to September of 1997 was [REDACTED] New York, New York. The affiant further states that the applicant is hardworking and reliable. The affiant submitted a photocopy of her New York State Identification Card issued to her on June 17, 2002. Here, the affiant fails to specifically state how long she has known the applicant, when she met him, where she met him, under what circumstances she met him, and whether she met him in the United States. The affiant has not provided evidence that she herself was present in the United States during the requisite period. Because this affidavit is significantly vague and lacking in detail it can only be accorded minimal weight in establishing that the applicant resided in the United States during the requisite period.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the requisite period, and has submitted unverifiable attestations from two persons. In addition, the affidavit from [REDACTED] referred to above lacks sufficient detail.

The absence of sufficiently detailed documentation to support or 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 contradictory statements on his applications and those made during his interview, and his 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 for the requisite period 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.