



U.S. Citizenship  
and Immigration  
Services

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[Redacted]

FILE: [Redacted]  
MSC 05 316 11454

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:  
[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, New York, 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 August 12, 2005. The district 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 district director denied the application as 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, counsel asserts that the applicant submitted sufficient evidence to “warrant a favorable exercise of discretion.”

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).

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 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 August 12, 2005. At part #30 of the Form I-687 application where applicants are instructed to list all residences in the United States since first entry, the applicant indicated that he resided at four different addresses in the Bronx, New York, but he failed to provide the inclusive dates of his residence at those addresses. At part #32, where applicants are instructed to list all absences outside the United States since initial entry, the applicant indicated “none.” At part #33, where applicants are instructed to list all employment in the United States since initial entry, the applicant indicated “N/A.”

During his interview with a CIS officer on March 16, 2006, the applicant stated that he first entered the United States from Canada without inspection in June 1981. When the officer asked him about travel outside the United States during the requisite period, the applicant indicated that he was outside the United States in “1986-1987.” When the officer asked the applicant about employment, the applicant stated that he was a street vendor.

In an attempt to establish continuous residence in the United States during the requisite period, the applicant submitted an affidavit signed by [REDACTED], a resident of Bronx, New York.

Mr. [REDACTED] stated that he first met the applicant at a church service in 1981 and they have been friends since that time. However, Mr. [REDACTED] did not provide any information regarding the applicant's addresses in the United States or the frequency of his contact with the applicant during the requisite period. Therefore, this affidavit will be accorded little evidentiary weight.

The applicant also submitted an affidavit dated December 18, 2005, from [REDACTED], a resident of Brooklyn, New York. Mr. [REDACTED] stated that he first met the applicant in 1983 and they had maintained contact with each other since that time. However, Mr. [REDACTED] provided no information as to how he met the applicant or the applicant's addresses in the United States during the requisite period. Therefore, this affidavit will be accorded little evidentiary weight.

On appeal, counsel asserts that the applicant has sufficient evidence to "warrant a favorable exercise of discretion." Counsel further asserts that the applicant's testimony was "detailed, consistent, and believable."

Counsel's assertions are not supported by the evidence contained in the record of proceeding. The two affidavits submitted by the applicant lack sufficient detailed and verifiable information to corroborate the applicant's claim. Furthermore, the applicant's own testimony is not, as counsel asserts, "detailed, consistent, and believable." At part #30 of the Form I-687, where applicants are instructed to list all addresses in the United States since initial entry, the applicant listed four addresses, all in Bronx, New York, but he did not provide his inclusive dates of residence at any of these addresses. Although the applicant claimed during his interview that he traveled outside the United States in "1986-1987," he did not list any absences outside the United States on his Form I-687. Rather, he wrote "NONE" at part #32 of the Form I-687, where applicants are instructed to list all absences outside the United States since initial entry. Additionally, although the applicant claimed during his interview that he worked as a street vendor during the requisite period, he failed to list any employment on the Form I-687 at part #33, where applicants are instructed to list all employment in the United States since entry.

Additionally, the record contains a photocopy of a Form I-687 apparently signed by the applicant on September 14, 1987. At part #33 of this Form I-687, where applicants are instructed to list all addresses in the United States since initial entry, the applicant indicated that he resided at "[REDACTED] [REDACTED] from May 1981 to June 1986 and at [REDACTED] Bronx, New York" from June 1986 to the date the application was signed. The applicant did not list either of these addresses on the current Form I-687. The applicant has not provided any explanation for this discrepancy in his claimed addresses in the United States during the requisite period.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, it is incumbent on the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

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 attestations from only two people concerning that period, both of which lack sufficient verifiable information to corroborate the applicant's claim.

The absence of sufficiently detailed 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 applicant's contradictory statements on his applications and 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 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.