



U.S. Citizenship  
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[REDACTED]

FILE: [REDACTED]  
MSC-05-201-13615

Office: NEW YORK

Date: DEC 20 2007

IN RE: Applicant: [REDACTED]

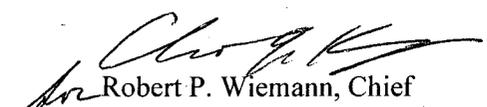
APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the  
Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

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.

  
for 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 April 19, 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 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, the applicant asserts that the documents he submitted in support of his application are credible. He submits amended documents with his appeal.

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 April 19, 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 and only address in the United States to be 2 [REDACTED] in Brooklyn, New York where he resided from March 12, 1980 until the he signed his Form I-687. At part #32 where the applicant was asked to list all of his absences from the United States since he entered, he indicated that he had never left the United States since he entered. At part #32 where the applicant was asked to list all churches and organizations of which he was a member, he indicated that he was not a member of any churches or organizations. At part #33, where the applicant was asked to list all of his employment since he first entered the United States, he showed his only employment in the United States to be for [REDACTED] in Brooklyn, New York from September of 1980 until July of 1999.

It is noted that the record also contains an affidavit signed by the applicant on January 6, 2006 on which he states that he is currently employed by Super Stop and Shop in Water Town, Massachusetts.

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:

- Photocopies of a passport issued to Rodrigue Dufresne that indicates it was issued to him on March 30, 1981 in Miami, Florida by the Haitian Consulate there. This card indicates that Mr. [REDACTED] resided in Port-au-Prince, Haiti at the time it was issued. This passport was renewed on July 16, 1986 in New York. Photocopied pages of this passport indicate that Mr. [REDACTED] obtained a re-entry visa to enter Haiti between March 30 and August 30 of 1981. Page 8 of this passport indicates

that Mr. [REDACTED], who has Alien Number [REDACTED], was admitted to the United States through Toronto on May 30, 1982.

- A letter from the office of [REDACTED] dated April 7, 2005 that states that the applicant has received medical services from his office since 1986. The regulation at 8 C.F.R. § 245a.2(d)(3)(iv) provides that credible proof of residence may be in the form of "medical records showing treatment or hospitalization of the applicant." The regulation further provides that these records "must show the name of the medical facility or physician and the date(s) of the treatment." This letter states that the applicant goes to the office regularly for check-ups but fails to provide the applicant's dates of treatment. It asserts that records were consulted to obtain this information but does not include those records. Because this letter only pertains to part of 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.
- A notarized letter from a [REDACTED] dated April 7, 2005 who indicates that the applicant rented a room from him and has resided there since March of 1980. Here, the affiant does not indicate whether there were periods of time during which the applicant did not reside with him. Though the affiant has submitted documents proving that he himself lived at this address of residence during the requisite period, he has not indicated how he met the applicant other than stating that he met him through his son. Though he indicates that the Service can contact him, he does not provide a telephone number at which the Service can call him to verify information in the affidavit. Because of its significant lack of detail, this affidavit can be accorded little weight in establishing that the applicant resided in the United States for the duration of the requisite period.
- A letter dated September 1, 1987 that indicates that [REDACTED] has been employed with the Eagle Plywood and Door Manufactures, Inc since January 29, 1982. While the record indicates that the Service found the phone number provided with this letter was not in service, it is noted here that this letter is from 1987. While this letter establishes that affiant [REDACTED] was working in the United States for part of the requisite period, this letter does not pertain to the applicant.
- Checks from the [REDACTED] issued to [REDACTED] Parkway in Brooklyn in 1987. While these documents establish that an affiant from whom the applicant submitted an affidavit resided at the address that the applicant indicates he resided at, these checks do not pertain to the applicant.
- Earnings statements for [REDACTED] from 1987 from [REDACTED] and [REDACTED] from 1987. While these documents establish that an affiant from whom the applicant submitted an affidavit resided at the address that the applicant indicates he resided at, these statements do not pertain to the applicant.
- A letter dated September 4, 1987 that indicates that Mr. [REDACTED] had a bank account with the [REDACTED] since November 21, 1986. While this document establishes that an affiant from whom the applicant submitted an affidavit had a bank account in the United States during the requisite period, this document does not pertain to the applicant.

While it is noted that the applicant has submitted additional evidence in the form of tax documents from [REDACTED] and birth certificates of the applicant's children, these documents do not pertain to the requisite period. The issue in this proceeding is the applicant's residence in the United States during the requisite time period. Because these documents do not pertain to the applicant's presence in the United States during the requisite time period, they are not relevant evidence for this proceeding.

Thus, on the application, which the applicant signed under penalty of perjury, he showed that he resided and worked in the United States since 1980. The only evidence submitted with the application that is relevant to the duration of the 1981-88 period in question is an affidavit from the applicant's landlord, Mr. [REDACTED]. While Mr. [REDACTED] has established that he himself was employed during the requisite period, his affidavit is significantly lacking in detail. The letter from Dr. [REDACTED] does not pertain to the duration of the requisite period.

In her Notice of Intent to Deny (NOID), the director noted that the evidence submitted by the applicant was not sufficient to establish by a preponderance of the evidence that the applicant resided continuously in the United States for the duration of the requisite period. She granted him thirty (30) days within which to submit additional evidence in support of his application.

In response to the director's NOID, the applicant resubmitted previous documents and also submitted the following:

- A letter from Pastor [REDACTED] from the Pilgrim Calvary Mission Church. This letter, dated March 6, 2006, indicates that Mr. [REDACTED] has known the applicant since 1980 and that he has been a member of his congregation. 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. Here, Mr. [REDACTED] does not indicate whether he met the applicant in the United States, what date the applicant became a member of the congregation or how frequently the applicant attends church services. No inclusive dates of church membership are indicated and the letter fails to provide an address where the applicant resided during his membership period. The record indicates that the Service attempted to call the phone number on this letter and it was not in service. Further, it is noted here that the applicant did not indicate he was a member of any churches on his Form I-687. Because this letter conflicts with other evidence in the record and because of its significant lack of detail, this letter can be afforded very minimal weight in establishing that the applicant resided continuously in the United States during the requisite period.

The director stated that when considered with the previously submitted documents, the totality of the evidence submitted by the applicant did not allow him to establish by a preponderance of the evidence that he had resided continuously in the United States for the duration of the requisite period.

On appeal, the applicant submits new letters from previous affiants. Details of those documents are as follows:

- A letter from the applicant dated August 11, 2006, that states that all of the testimony the applicant has submitted is true and correct and that he is further submitting tax returns for the last

three years and other evidence in support of his application. Though these tax returns are noted, they do not pertain to the requisite period and therefore, they are not relevant evidence for consideration in this proceeding. However, it is noted that the applicant's 2003 W-2 form indicates that the applicant lives in Dorchester, Massachusetts and works for the New England Confectionery Company. It is further noted that the applicant's 2005 W-2 form indicates that he lives in Mattapan, Massachusetts and that his employer is the S and S Credit Company. These addresses are not consistent with the applicant's Form I-687, which shows he only lived on Rockaway Parkway in Brooklyn from 1980 until 2005. It is noted that the applicant has submitted a letter from Rodrigue Dufresne who states that the applicant currently works for him in New York and has done so since 1981. It is also noted that the applicant submitted an affidavit on his own behalf which on January 6, 2006 on which he stated that he worked for Super Stop and Shop in Water Town, Massachusetts. It is further noted that the affidavit from Jean Petit-Frere from April 7, 2005 asserts that the applicant has resided continuously in Brooklyn, New York from 1980 until 2005. The applicant's Forms W-2 contain information regarding the applicant's addresses and places of employment that is inconsistent with other documents in the record. These inconsistencies in the record cast doubt on whether the applicant has accurately represented his places of employment and addresses of residence to the Service.

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).

- A letter from Dr. [REDACTED] dated June 13, 2006 that states that the applicant visits the doctor's office approximately once a month. He goes on to say that these monthly visits began in 1986 and continued until the date he signed this letter. Though this letter indicates that the applicant has had ongoing contact with the doctor, medical records were not included with this letter. Further, this letter does not establish that the applicant maintained continuous residence for the duration of the requisite period. Therefore, it carries no weight in establishing that he was continuously residing in the United States for the duration of that time.
- A letter from Reverend [REDACTED], pastor of the Pilgrim Calvary mission Church in Brooklyn, New York. This letter is dated July 18, 2006 and asserts that the applicant joined this congregation in 1984. It is again noted that the applicant did not indicate that he was a member of any church on his Form I-687. Though Pastor Delpo indicates that he met the applicant in April of 1980, he does not state where he met the applicant. Therefore, it is not clear whether he met him in the United States. This letter conflicts with other evidence in the record and because it does not establish that the applicant was a member of the Pilgrim Calvary Mission Church for the duration of the requisite period, it carries no weight in proving that the applicant resided continuously in the United States for the duration of that time.
- A letter from [REDACTED] dated June 12, 2006, which states that though he worked for the company from whom he previously sent an employment verification letter, the name of that company has now changed to Hassel Plywood, Inc. He provides a new phone number for the company. Though this letter explains why the phone number of this affiant's old employer did not work when the Service tried to call them, and while it lends credibility to the fact that the

affiant lived and worked in the United States during the requisite period, the letter does not establish that the applicant continuously resided in the United States during that time.

- A letter from [REDACTED] dated June 13, 2006, which states that the applicant worked with him painting and doing plaster work from 1981 until the present time. It is noted here that the applicant indicated on his Form I-687 that he worked for [REDACTED] from September of 1980 and that his work for Mr. [REDACTED] ended in July of 1999. This indicates that from 1999 until the applicant signed his Form I-687 in 2005 he did not work for Mr. [REDACTED]. The applicant further submitted an affidavit on a Form I-134 on which he stated that he worked for Super Stop and Shop in Water Town Massachusetts on the date he signed that form, which was January 6, 2006. Therefore, this letter conflicts with testimony provided by the applicant regarding the dates of his employment previously shown. Because this letter conflicts with other evidence in the record, doubt is cast on the assertions made in it.

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, 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 individuals that contain testimony that conflicts with other evidence in the record.

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 have with minimal probative value and conflict with other evidence in the record, 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.