



U.S. Citizenship  
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FILE:



Office: NEWARK

Date:

MSC 05 236 11889

DEC 21 2007

IN RE:

Applicant: 

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, Newark, and 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. The director determined that the applicant had not established by a preponderance of the evidence that she had continuously resided in the United States in an unlawful status for the duration of the requisite period. Specifically, the director determined that the applicant failed to submit documentation of her continuous U.S. residence and provided information that is inconsistent with her claimed eligibility for class membership. The director denied the application, finding that the applicant had not met her 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 director failed to consider evidence submitted in support of her claim.

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). 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).

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, 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.

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 she resided in the United States during the requisite time period. The record shows that the applicant did not provide supporting documentation at the time she filed her application or at the time she was interviewed by a Citizenship and Immigration Services officer. However, the applicant supplemented the record on appeal with the following affidavits:

1. An affidavit dated October 24, 2005 from [REDACTED] claiming that he met the applicant in New York in 1988. Although the affiant stated that his wife's family has known the applicant since 1985, he did not claim to have personal knowledge of the applicant's U.S. presence until 1988 and did not specify the month during which he purportedly met the applicant. As such, the affiant has not established that he met the applicant during the statutory time period. Rather, the affiant stated that he learned that the applicant came to the United States in December 1981 through the applicant's uncle. The affiant also referred to the applicant's departure from the United States in 1991, but did not specify the month or date of the departure.
2. An affidavit dated October 24, 2005 from [REDACTED] claiming that she first met the applicant in 1984 while working at a department store where the applicant and her family were shopping. The affiant claimed that she visited the applicant at the home she shared with her aunt and uncle. This affiant also claimed that the applicant's uncle told her that he, his wife, and the applicant arrived in the United States in December 1981. The affiant did not claim to have firsthand knowledge of this information, as she did not claim to know the applicant until 1984. The affiant claimed that she and the applicant attended the same church together and maintained a friendship until the applicant went back to her home country in 1991. She stated that the applicant also returned to the United States in 1991 and claimed that she and the applicant have continued to be friends.

3. An affidavit dated October 22, 2005 from [REDACTED] claiming that she attended the send-off party for the applicant in 1981 when the applicant departed her home country of Benin. The affiant claimed that she got news of the applicant's arrival to the United States in September 1981 and stated that she has maintained a friendship with the applicant since her own arrival to the United States, a date which the affiant did not provide. Thus, the applicant did not clarify when she first had personal knowledge of the applicant's U.S. residence, as any knowledge prior to her own arrival to the United States would have been hearsay and, therefore, would be given minimal evidentiary weight in establishing that the applicant resided in the U.S. continuously during the statutory time period.
4. An affidavit dated October 24, 2005 from [REDACTED] claiming that he first met the applicant on December 25, 1981 at his cousin's house in New York. The affiant stated that he visited the applicant and her uncle, but did not state the frequency of his visits. He also claimed to have maintained a friendship with the applicant after her return to the United States in 1991.

The above documentation is deficient and fails to support the applicant's claim. None of the above affiants provided any details that would lend credibility to their claimed relationship with the applicant; three of the affiants (namely, those in nos. 1-3) based their knowledge on information obtained through hearsay and assumptions rather than personal knowledge; and the affiants in Nos. 1 and 2 suggested that the applicant's uncle told them that the applicant arrived to the United States in December 1981, which conflicts with information provided by the applicant in No. 30 of the Form I-687 application where the applicant indicated that her U.S. residence commenced in September 1981. Additionally, none of the affiants provided their respective phone numbers where they could be reached for verification of the information they provided.

Lastly, the applicant failed to address the director's valid observation with regard to the lack of school records despite the fact that the applicant was of school age during the statutory period when her alleged U.S. residence was ongoing. That being said, in reviewing the applicant's Form I-687, No. 30, which asks the applicant to provide a list of her U.S. residences from the date of her first entry, the applicant listed two addresses—one to account for the time period from September 1981 to April 1986 and another to account for January 2003 through the date of the application. The applicant did not provide a residential address to suggest U.S. residence after April 1986 and through the remaining portion of the statutory time period, thereby suggesting that she was not residing in the United States during a significant portion of the statutory time period.

Additionally, the record includes a Department of State OF-230, Application for Immigrant Visa and Alien Registration, completed by her in November 1992, in which she indicated that she resided in Benin until September 1991. This information further detracts from the validity of 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 reliance upon documents with minimal probative value, it is concluded that she 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-*, 20 I&N Dec. 77. 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.