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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**



FILE:

MSC 05 133 11727

Office: CINCINNATI

Date: **JUL 16 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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, Cleveland, Ohio, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director determined the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that he attempted to file a Form I-687, Application for Status as a Temporary Resident, with the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS) in the original legalization application period of May 5, 1987 to May 4, 1988. Therefore, the director determined that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and denied the application.

On appeal, the applicant asserts that the person who helped him fill out the Form I-687 application wrote on the application that he first came to the United States in 1982. The applicant claims that he actually came to the United States in 1981 at age 12 and resided continuously in this country until 1997.

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).

An applicant applying for adjustment to temporary resident status must 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.

An alien applying for adjustment of status 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. See 8 C.F.R. § 245a.2(d)(5).

The sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. **To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony.** 8 C.F.R. § 245a.2(d)(6). (Emphasis added.)

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 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 February 10, 2005. At block #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant indicated that he listed at resided at [REDACTED], New York, New York” from January 1986 to February 1989 and at [REDACTED], [REDACTED], Brooklyn, New York” from February 1989 to July 1998.

At his interview with a CIS officer on March 27, 2006, the applicant stated that he lived in Touba from birth until 1982, when he first came to the United States. According to the notes of the interviewing officer, the applicant could not remember how he came to the United States, whether by plane, by boat, or through entry without inspection from Canada or Mexico. The applicant told the officer that he lived in the United States from 1982 to 1997. He claimed that he lived at [REDACTED] New York, New York” from 1982 to 1986 and on [REDACTED] in Brooklyn, New York, from 1986 to 1997. He further told the officer that he graduated from high school in Touba in 1982. The applicant did not provide any independent evidence to corroborate his claim of continuous residence in the United States from 1982 through 1997.

On appeal the applicant claims that he was advised by the person who helped him fill out the Form I-687 application that anyone who came to the United States in 1982 was eligible for temporary resident status under the CSS Settlement Agreement. The applicant asserts that the person who helped him complete the Form I-687 listed 1982 as his date of initial entry into the United States on the application. The applicant now claims on appeal that he first entered the United States in 1981 at age 12 and that he lived continuously in the United States until 1997.

The applicant’s assertions on appeal are not credible. Nowhere on the applicant’s Form I-687 does the year 1982 appear. The applicant listed his first address in the United States on the Form I-687 as 1986. He listed his last date of entry into the United States as October 7, 1998. The applicant did not claim to have lived in the United States from 1982 to 1997 until the date he appeared for his legalization interview. On appeal, he advances a revised claim that he first entered the United States in 1981 at the age of 12, but he does not submit any independent evidence to corroborate his claim.

The applicant’s claim during his interview that he lived at a hotel in Manhattan from 1982 to 1986 and on [REDACTED] in Brooklyn, New York, from 1986 to 1997 contradicts his claim on the Form I-687 that he lived at “[REDACTED] in Manhattan, New York” from January 1986 to February 1989 and at “[REDACTED], Brooklyn, New York” from February 1989 to July 1998. The applicant has not provided any explanation for these contradictions in his claimed dates of entry and residence in the United States.

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 evidence to corroborate his claim of continuous residence in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 during the application period ending on May 4, 1988. Furthermore, there are contradictions in the applicant’s claimed dates of entry and residence in the United States. The applicant’s failure to submit any evidence to corroborate his 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 application and during his legalization interview and his failure to submit any evidence to corroborate his claims, 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.