

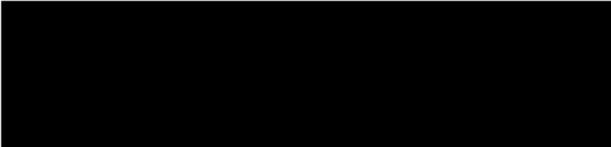


U.S. Citizenship  
and Immigration  
Services

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invasion of personal privacy

LI



FILE: [Redacted] Office: Columbus  
MSC 05 292 11297

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

The district director determined that 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 between May 5, 1987 to May 4, 1988. Therefore, the district director concluded 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 contends that he has submitted sufficient evidence to establish his claim of residence in the United States for the requisite period. The applicant asserts that his inability to obtain further supporting documentation is the result of the passage of time and his status as an illegal alien during the period in question. The applicant includes copies of previously submitted documents in support of his appeal.

An alien applying for adjustment to temporary resident status must establish that he or she entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through the date the application is filed. Section 245A(a)(2)(A) of the Immigration and Nationality Act (Act) and 8 C.F.R. § 245a.2(b).

An alien 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 and 8 C.F.R. § 245a.2(b)(1).

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. *See* Paragraph 11, page 6 of the CSS Settlement Agreement and paragraph 11, page 10 of the Newman Settlement Agreement.

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. 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 including affidavits 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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to establish continuous residence 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 from 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 July 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 listed [REDACTED] in New York, New York from October 1980 through at least the date of the termination of the original legalization application period on May 4, 1988. Further, at part #33 of the Form I-687 application where applicants were asked to list all employment dating back to January 1, 1982, the applicant listed “Gasa Supermarket” from November 1980 to February 1986 and “Street Vendor” from March 1986 to December 1988.

In support of his claim of continuous residence in this country since prior to January 1, 1982, the applicant submitted a letter containing the letterhead of the Hotel Bryant at [REDACTED] in New York, New York that is dated March 14, 1987. The letter is signed by [REDACTED] who listed his position at the hotel as manager. [REDACTED] stated that the applicant lived in room #31 of the Hotel Bryant located at [REDACTED] in New York, New York from October 1980 until December 1988. However, [REDACTED]'s testimony that the applicant lived at [REDACTED] from October 1980 to December 1988 conflicted with the applicant's listing of his address of residence as [REDACTED] in New York, New York for that same period at part #31 of the Form I-687 application. In addition, although the letter is dated March 14, 1987, [REDACTED] attested to the applicant's residence until December 1988, more than twenty-one months after the date the letter was executed. The fact that [REDACTED] was able to provide testimony that the applicant resided at a particular address until December 1988 in a letter that written over twenty months prior to such date brings into question the origin, authenticity, and credibility of this document.

The applicant provided a letter containing the letterhead of the Gasa Supermarket at [REDACTED] in New York, New York that is dated November 10, 1986. The letter is signed by [REDACTED] who listed his position at this establishment as personnel manager. [REDACTED] declared that this enterprise employed the applicant as a stock boy from February 1981 to the date the letter was executed on November 10, 1986. [REDACTED] noted that the applicant resided at [REDACTED] in New York, New York during his employment with Gasa Supermarket. However, [REDACTED] testimony that the applicant lived at [REDACTED] from February 1981 through at least November 10, 1986 conflicted with the applicant's listing of his address of residence as [REDACTED] in New York, New York for that same period for that same period at part #31 of the Form I-687 application. Further, [REDACTED] testimony that the applicant worked at this establishment from February 1981 through at least November 10, 1986 conflict with the applicant's testimony that he worked for Gasa Supermarket from November 1980 to February 1986.

On November 22, 2005, the district director issued a notice of intent to deny to the applicant informing him of CIS' intent to deny his Form I-687 application because he had failed to submit sufficient credible evidence of continuous unlawful residence in the United States for the period in question. The applicant was granted thirty days to respond to the notice and provide additional evidence in support of her claim of residence in the requisite period.

In response, the applicant submitted a statement in which he reiterated his claim of residence in this country for the period in question. The applicant declared that he was attempting to obtain further documentation in support of such claim.

The applicant submitted a declaration that is signed by [REDACTED] stated that he had previously known the applicant in their home country of Ghana. [REDACTED] indicated that he subsequently met the applicant in this country at an African market on February 3, 1982 and that they remained in contact and developed a trusting friendship. Although [REDACTED] testified to the applicant's residence in the United States since February 3, 1982, he failed to provide any relevant and verifiable testimony, such as the

applicant's address(es) of residence in this country, to corroborate the applicant's claim of residence in the United States for the requisite period. In addition, [REDACTED] failed to attest to the applicant's residence in the United States since prior to January 1, 1982 through February 3, 1982.

The district director determined that the applicant had failed to submit sufficient evidence to demonstrate 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 in the original legalization application period between May 5, 1987 to May 4, 1988. Therefore, the district director concluded 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 March 2, 2006.

The applicant's statements on appeal regarding the sufficiency of the evidence he submitted in support of his claim of continuous residence in this country for the requisite period have been considered. However, the evidence submitted by the applicant relating to his residence in the United States from prior to January 1, 1982 lacks sufficient detail and conflicts with critical elements of the applicant's claim of residence in this country for the requisite period. While it is acknowledged that it may be difficult to obtain supporting documentation relating to a period that occurred some twenty years ago while the applicant was an illegal alien, the mere passage of time and his undocumented status are insufficient to explain the lack of substantive and probative testimony as well as conflicting testimony contained in the documentation submitted in support of the applicant's claim of residence in the United States for period in question.

The absence of sufficiently detailed supporting documentation and the conflicting testimony contained in such documentation seriously undermine the credibility of the applicant's claim of residence in this country for the requisite period. 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. The applicant has failed to submit sufficient documentation to meet his burden of proof in establishing that she has resided in the United States since prior to January 1, 1982 by a preponderance of the evidence as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M-*, 20 I&N Dec. at 77.

Given the applicant's failure to provide sufficient credible evidence to corroborate his claim of residence 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 as required under section 245A(a)(2) of the Act. 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.