

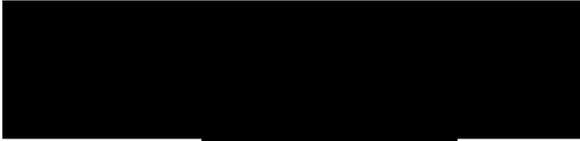
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U.S. Citizenship
and Immigration
Services

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FILE: [Redacted]
MSC-04-260-10023

Office: NEW YORK

Date: JUL 18 2007

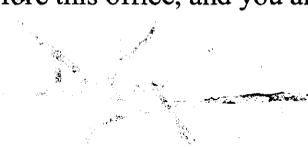
IN RE: Applicant: [Redacted]

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

The 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 attempts to account for the contradictions in his previously furnished evidence. The applicant also submitted a notarized letter corroborating his residence in the United States since 1982.

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 9.

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 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 filed a Form I-687, Application for Status as a Temporary Resident, and a Form I-687 Supplement, CSS/Newman (LULAC) Class Membership Worksheet, with CIS on June 16, 2004. The applicant signed this form under penalty of perjury, certifying that the information he provided is true and correct. Part 30 of the application requests the applicant to list all of his residences in the United States since his first entry. The applicant responded that he resided at [REDACTED] New York, NY from 1981 until 1988. Part 33 of the application requests the applicant to list his employment in the United States since his entry. The applicant responded that he was "self employed" as a peddler at an unknown location from 1982 until 1989. Although the information provided on this application indicates that the applicant has resided in the United States during the requisite period, he has not provided credible evidence to corroborate this claim.

An alien applying for adjustment of status 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, the applicant must provide evidence of eligibility apart from his or her 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 evidence to establish proof of residence in the United States during the requisite period. Examples of documentation that can be submitted include: past employment records; utility bills; hospital or medical records; attestations by churches, unions or other organizations; deeds, mortgages, contracts to which the applicant has been a party; and letters or correspondence between the applicant and another person or organization. The applicant has failed to provide such corroborating evidence.

An applicant may also provide “any other relevant document” as proof of his residence. 8 C.F.R. § 245a.2(d)(3)(vi)(L). The applicant has submitted numerous written statements in support of his claim of continuous residence in the United States during the requisite period. The issue in this proceeding is whether these affidavits establish by a preponderance of the evidence the applicant’s residence in the United States during the requisite period.

The applicant submitted a notarized letter from [REDACTED], which provides, “I, [REDACTED] of [REDACTED], New York, NY 10032 have been knowing [sic] [REDACTED] of [REDACTED] 10026 [sic], New York, NY 10026 since 1982.” The applicant also submitted a letter from [REDACTED]. This letter provides, “I, [REDACTED] of [REDACTED] [REDACTED] New York, NY 10003 have been knowing [sic] [REDACTED] of [REDACTED] New York, NY 10026 since 1982.” These letters are deficient because they lack significant detail on the authors’ relationship with the applicant. The letters fails to provide any information on how the authors first met the applicant and the extent of their contact with the applicant during the requisite period. Therefore, these documents can only be given minimal weight as corroborating evidence.

The applicant submitted eight documents entitled, “CSS/LULAC Legalization and LIFE Act Adjustment Form to Gather Information for Third Party Declarations.” However, these forms are only partially completed. The forms only contain the authors’ name, date of birth, place of birth, address, and identity document. They do not provide any information on the authors’ knowledge of the applicant’s residence in the United States during the requisite period. Similarly, the applicant has submitted three documents entitled, “Affidavit of Witness.” However, these forms only contain the authors’ name, occupation, address and signature. They do not provide any information on the authors’ knowledge of the applicant’s residence in the United States during the requisite period. The lack of any pertinent information in these documents gives them no weight as corroborating evidence.

The sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6). The evidence submitted by the applicant in this case is not probative and credible because of the aforementioned deficiencies. The applicant has therefore failed to meet his burden of proof in this proceeding. The applicant has not established by a preponderance of the evidence his residence in the United States during the requisite period.

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 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.