



U.S. Citizenship
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FILE: [REDACTED]
MSC 06 033 13042

Office: LOS ANGELES

Date: JUL 24 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.

A handwritten signature in black ink, appearing to be "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, Los Angeles, California, 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 district 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 states that the affidavits from friends are the only proof he can offer to corroborate his claim of continuous residence in the United States during the requisite period.

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).

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 November 2, 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 indicated that he resided at “[redacted] Los Angeles, California” from October 1981 to March 1987; at “[redacted] South El Monte, California” from June 1987 to September 1997; at “[redacted], Los Angeles, California” from November 1997 to December 2000 and at “[redacted] Long Beach, California” since April 2001. At part #33, where applicants are instructed to list all employment since initial entry into the United States, the applicant indicated that he worked as a caregiver for Apex Homecare Services, Inc., in Los Angeles, California, from September 1981 to February 1987 and as a caregiver for “[redacted] of Port Hueneme, California, from August 1987 to September 1997.

At his interview with a CIS officer on April 24, 2007, the applicant stated that he first entered the United States October 15, 1981, as a nonimmigrant C-1 crewman coming to join a ships at a United States port of entry. The record contains a CIS computer printout indicated that the

applicant was last admitted to the United States at San Francisco, California, on March 23, 2001, as a nonimmigrant C-1 crewman.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted an affidavit dated October 18, 2005, from [REDACTED] of Long Beach, California. [REDACTED] stated that the applicant had resided at [REDACTED] Long Beach, California" since April 15, 2001. This affidavit relates to the applicant's residence in the United States after the requisite period.

The applicant also submitted an affidavit dated October 18, 2005, from [REDACTED] of Los Angeles, California, stating that the applicant resided at [REDACTED] Los Angeles, California" from November 26, 1997 to December 15, 2000. This affidavit also relates to the applicant's residence in the United States after the requisite period.

The applicant included an affidavit dated October 5, 2005, from [REDACTED] stating that she is the applicant's landlord and that the applicant lived at [REDACTED] South El Monte, California" from June 22, 1987 to September 10, 1987. [REDACTED] does not attest to the applicant's residence in the United States prior to 1987.

The applicant provided an affidavit dated October 19, 2005, from [REDACTED] of Santa Monica, California, stating that the applicant had resided at [REDACTED] Los Angeles, California" from October 5, 1981 to March 15, 1987; at [REDACTED] South El Monte, California" from June 22, 1987 to September 10, 1997; at [REDACTED] Los Angeles, California" from November 26, 1997 to December 15, 2000; and at [REDACTED] Long Beach, California" from April 15, 2001 to the date of her attestation. [REDACTED] explained that the applicant was her husband's caregiver from February 1, 2003 through September 23, 2004. Since [REDACTED] indicated that the applicant was her husband's caregiver from February 2003 to September 2004, it appears that the applicant's addresses on the affidavit dated prior to February 1, 2003, represent second-hand information provided to her by the applicant.

The applicant also provided an affidavit dated October 4, 2005, from [REDACTED] of [REDACTED] Los Angeles, California. [REDACTED] stated that she was the applicant's landlord and the applicant resided in her home from October 5, 1981 to March 15, 1987.

On appeal the applicant states that he first entered the United States in January 1981 as a crewman on a cruise ship that had traveled to the United States from the Caribbean. The applicant stated that his ship was docked in Long Beach, California, in August 1981 when he and a friend decided to abscond from the ship after being granted three hours shore leave by the captain of the vessel. He explains that he stayed with his friend's relative for two weeks and found a job as a caregiver in Los Angeles. He states that he lived and worked in the United States as an undocumented worker doing odd jobs, especially that of live-in caregiver, and was always paid in cash.

The applicant claims that he left the United States to return to the Philippines in 1987 due to his grandmother's death. He stated that he stayed in the Philippines until June 1987, when he was able to get another job as a crewman on an oil tanker bound for the United States. He claims that he "deserted again when I was given a chance." The applicant does not provide any independent evidence to corroborate his statements.

In summary, 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 only three people concerning that period, all three of which lack sufficient specificity to corroborate 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 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.