



U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE: [REDACTED]  
MSC 05 216 10067

Office: HOUSTON

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:

[REDACTED]

**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, Houston, Texas, 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, counsel reiterates the applicant's claim and asserts that the applicant has submitted sufficient evidence to establish continuous residence in the United States during the requisite period by a preponderance of the evidence. Counsel submits affidavits from the applicant and two acquaintances in support of the applicant's claim, along with copies of affidavits previously submitted in support of the application.

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 May 4, 2005. At block #30 of the Form I-687 application where applicants are instructed to list all residences in the United States since first entry, the applicant indicated that he resided at [REDACTED] Edinburg, Texas” from 1981 to 1985 and at [REDACTED] Houston, Texas” from 1985 to 1990. At block #33, where applicants are instructed to list all employment since initial entry into the United States, the applicant indicated that worked for [REDACTED] in Edinburg, Texas, as a store helper from 1981 to 1985 and for [REDACTED] in Houston, Texas, as a laborer from 1985 to 1990.

At his interview with a CIS officer on September 2, 2005, the applicant stated that he first entered the United States in December 1981 at the age of eleven. The applicant stated that his parents allowed him to travel alone to the United States at the age of 11 while his other siblings remained in Mexico. The applicant testified that he lived in Mission, Texas, for five years and worked as a helper in a store, but he could not recall the name of the store, the physical address of the store, or the name of the storeowner. The applicant further stated that in 1986 he began working for a contractor named [REDACTED], and that he was paid in cash.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted an affidavit dated September 14, 1993, from [REDACTED] stating that the applicant used to work part-time in his store located at "[REDACTED] Edinburg, Texas" in 1983. [REDACTED] explained that the applicant's duties included helping clean up the store and stocking the shelves. [REDACTED] did not provide the applicant's addresses during the requisite period.

The applicant also submitted a statement dated August 30, 1993, from [REDACTED] stating that he has known the applicant since December 1981. He stated that he met the applicant at a dance when the applicant was "selling gum outside in the parking lot." [REDACTED] did not provide any specific or verifiable information such as the applicant's addresses in the United States during the requisite period.

The applicant provided an affidavit dated August 30, 1993, from [REDACTED] stated that she had known the applicant since March 1982 and that she and the applicant were friends. [REDACTED] did not provide any information regarding the basis of her acquaintance with the applicant or the applicant's addresses in the United States during the requisite period.

The applicant included an affidavit dated August 30, 1993, from [REDACTED]. [REDACTED] stated that he had known the applicant since December 1981 and he and the applicant were friends. However, [REDACTED] did not provide any information regarding the basis of his acquaintance with the applicant or the applicant's addresses in the United States during the requisite period.

The applicant also submitted an affidavit dated April 2, 2001, from [REDACTED] stated that he had known the applicant since 1981 and listed the applicant's current address. However, [REDACTED] did not provide the applicant's addresses in the United States during the requisite period, nor state how frequently he had contact with the applicant.

Additionally the applicant provided an affidavit dated April 2, 2001, from [REDACTED] z. [REDACTED] stated that he had known the applicant since 1981 and provided the applicant's address as of the date of the affidavit. However, [REDACTED] did not provide any information regarding the basis of his acquaintance with the applicant other than to state they met "at the apartments." He failed to provide the applicant's addresses in the United States during the period in question.

The applicant also submitted an affidavit dated March 30, 2001, from [REDACTED] [REDACTED] stated that he and the applicant had worked together since 1981. [REDACTED] provided the applicant's address as of the date of the affidavit. However, [REDACTED] did not provide the applicant's addresses in the United States during the requisite period. Furthermore, although [REDACTED] statement that he and the applicant have worked together since 1981, he did not provide any information regarding the name of the employer or the place of employment where he and the applicant purportedly worked together. It is noted that the applicant claims to have worked for two different employers during the qualifying period.

On appeal counsel reiterates the applicant's claim of continuous residence in the United States during the requisite period. Counsel submits an affidavit from the applicant dated December 22, 2005, in which the applicant states:

At the time I left Mexico, I left with a group of friends. We wanted to see about a better life than in Nuevo Leon, Mexico. When we first arrived in the United States we started out in Mission, Texas. That was in December of 1981.

As I have stated before, at that time I did not attend school. Most of the time I was able to find work with a gentleman who owned a little store. I would be paid in cash and did not understand that I would have to report what I was paid. At that time I was eleven years old. I am sorry that I cannot recall any names or addresses as I was very young and never maintained contact with that family.

Counsel also submitted a second affidavit dated December 22, 2005, from [REDACTED] in which [REDACTED] states that he first met the applicant at a birthday party at the house of the applicant's uncle, [REDACTED]. [REDACTED] does not provide the applicant's addresses in the United States during the requisite period, nor has he provided [REDACTED] address.

Counsel included a second affidavit dated December 22, 2005, from [REDACTED]. [REDACTED] states that has known the applicant since 1981, and that he met the applicant through friends from work. In 1981 the applicant was an eleven-year-old child purportedly working part-time in a store in Edinburg, Texas. [REDACTED] has not provided any specific information regarding the "friends from work" through whom he states he met the applicant. Furthermore, [REDACTED] has not provided the applicant's addresses in the United States during the requisite period.

Counsel also provides copies of the affidavits previously submitted in support of the application.

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 seven people concerning that period, all of which lack sufficient verifiable information 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.

It is noted that the applicant was arrested in Harris County, Texas, on May 21, 1995, and charged with driving while intoxicated, a Class B misdemeanor. The record contains a court document from the Harris County District Court, Harris County, Texas, indicating that the applicant was convicted of this charge upon a plea of guilty on July 6, 1995. The court ordered the applicant to serve 180 days in the county jail and pay fines and fees totaling \$610.00. The court also placed the applicant on probation for a period of one year. The court document indicates that the applicant successfully completed his probation period and the probation was terminated on July 17, 1996. (Case No. 9521034).

On February 3, 1997, the applicant was arrested in Harris County, Texas, and charged with driving while intoxicated, second offense, a Class A misdemeanor. On February 4, 1997, the applicant pled guilty to this charge in the Harris County District Court, Harris County, Texas. The court ordered the applicant to serve thirty days in the Harris County Jail, with credit for 3 days served, and ordered the applicant to pay court costs in the amount of \$217.00. The court also suspended the applicant's driver's license for a period of one year. (Case No.9704881).

Since the applicant has only been convicted of two misdemeanors, he is not ineligible for temporary resident status based on his criminal record. 8 C.F.R. § 245a.2(c)(1).

**ORDER:** The appeal is dismissed. This decision constitutes a final notice of ineligibility.