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FILE: [Redacted]
MSC 05 201 12957

Office: BOSTON

Date: **JUL 26 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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

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 Acting District Director, Boston, Massachusetts, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The acting director denied the application because the applicant had failed to meet the burden of proof in establishing that he entered and maintained continuous unlawful residency in the United States from before January 1, 1982.

On appeal, the applicant's attorney reiterated statements of fact made by the applicant during his interview with an immigration officer, asserted that the decision failed to take into account the affidavit submitted by the applicant, and asserted that the acting director failed to issue a Notice of Intent to Deny to the applicant prior to issuing the final decision.

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 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 applicant 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 applicant 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 and 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 submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to Citizenship and Immigration Services (CIS) on April 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 his past addresses including: [REDACTED] Bronx, New York from February 1981 to June 1988; and [REDACTED], Brooklyn, New York from June 1988 to November 1997.

In support of his application, the applicant included an affidavit from [REDACTED] who stated that he knew the applicant very well and for a long time. The affiant stated he knew the applicant since January 1981 in New York. The affiant stated the applicant was living at [REDACTED] Brooklyn, New York; and [REDACTED], Bronx, New York. This affidavit is found to be consistent with the applicant's statements on Form I-687. Although not required, the affiant provided no supporting documentation of his identity or presence in the United States during the requisite period. The affidavit also failed to provide details regarding the manner in which the affiant and the applicant became acquainted and the nature of their acquaintance. As a result of the lack of detail provided in the affidavit, its probative value is limited.

In denying the application the acting director indicated that the applicant stated in his interview with an immigration officer that, while he was in the United States, the applicant did not attend schools, he never sought medical attention, and he was never arrested. However, the record indicates the applicant stated in the interview that he had no arrests, he had attended no school from ages 15 to 18, and that he had visited no hospital in the 1980s and 1990s but went to "Brigham and Womens" in Boston in 2000. The record does not indicate the applicant stated that he never attended schools or sought medical attention in the United States. The relevance of the applicant's statements regarding education and medical attention to the acting director's decision is unclear. In addition, there is no evidence in the record that the applicant was ever arrested.

On appeal the applicant's attorney reiterated statements of fact made by the applicant during his interview with an immigration officer, argued that the decision failed to take into account the affidavit submitted by the applicant, and argued that the acting director failed to issue a Notice of Intent to Deny to the applicant prior to issuing the final decision. The applicant provided no additional relevant evidence in support of his application for temporary residence.

It is noted that, on appeal, the applicant's attorney erroneously referred to the current application as an application for permanent residence pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000. In accordance with this error, the attorney mistakenly stated that the director is required to issue a Notice of Intent to Deny (NOID) pursuant to 8 C.F.R. § 245a.20(a)(2). This subsection applies to applications for permanent residence pursuant to the LIFE Act. The current application is for temporary residence pursuant to the CSS/Newman settlement agreements. According to paragraph 7, page 4 of the CSS Settlement Agreement and paragraph 7, page 7 of the Newman Settlement Agreement, these agreements require a NOID in cases where the applicant will be denied class membership. As the issue of the applicant's class membership was not raised by the acting director, the failure to issue a NOID is not found to be erroneous.

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 one affidavit that lacks sufficient detail. Specifically, the affidavit provides no detail regarding the manner in which the applicant and the affiant became acquainted and the nature of their acquaintance.

The absence of sufficiently detailed and consistent 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 fact that the applicant provided only one piece of evidence in support of his testimony and written statements, and given the applicant's reliance upon a document 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.