

PUBLIC COPY

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

LI



FILE: [REDACTED]
MSC-05-181-12299

Office: CLEVELAND

Date: JUN 13 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, 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 he entered the United States and that he was physically present in the United States since November 6, 1986 until filing the Form I-687 application. Therefore, the director denied the application.

On appeal, the applicant provided a written statement asserting he has resided in the United States continuously since 1996 and explaining the difficulty in providing evidence when the applicant is not warned in advance of the need to save records.

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. 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 March 23, 2005. At part #16 of the Form I-687 application where applicants were asked when they last came to the United States, the applicant indicated his date of last entry was May 15, 1996. At part #30 where applicants were asked to list all residences in the United States since first entry, the applicant initially showed his first address in the United States to be at ██████████ Columbus, Ohio, from May 1996 to February 2000. Applicant also submitted copies of pages from his passport. These included a copy of a B-1/B-2 visa stamp issued on April 2, 1996, and a copy of a stamp indicating entry into the United States in 1996. None of the evidence initially submitted by the applicant indicates that he entered the United States prior to January 1, 1982, or that he resided in the United States during the statutory period.

At his interview with a CIS officer, the applicant stated that he first entered the United States in 1986.

In response to a Notice of Intent to Deny issued on December 8, 2005, the applicant submitted an unsworn written statement from his physician, ██████████ confirming that the applicant had been treated by the affiant from 1986 to the present time. In this statement, ██████████ also asserted that the applicant "has continuously maintained his physical presence in NY state." This statement was prepared on letterhead paper of a medical office located in Brooklyn, New York, but it did not include identity documentation for ██████████ or any evidence showing that ██████████ was in the United States during the statutory period. In addition, this written statement does not confirm that the applicant entered the United States prior to January 1, 1982.

In denying the application, the director noted that the letter applicant provided from his doctor is insufficient to establish the applicant continuously resided in the United States since he entered and that he was physically

present in the United States since November 6, 1986 until filing the application. The director found that the applicant failed to meet his burden of proving by a preponderance of the evidence that he 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 under 8 CFR 245a.2(d)(5).

On appeal the applicant provided no additional documentation and explained that he has resided in the United States continuously since 1996. This statement does not support the applicant's claim of eligibility. Specifically, this statement does not indicate that the applicant entered the United States prior to January 1, 1982.

In summary, the applicant has not provided any evidence that he entered the United States prior to January 1, 1982. In fact, the applicant's statements, including his Form I-687, his oral testimony during his interview with a CIS officer, and his statement on appeal, all indicate the applicant entered the United States after January 1, 1982. In addition, the written statement provided by the applicant's physician does not confirm that the applicant entered the United States prior to January 1, 1982.

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 that the record contains no evidence that the applicant entered the United States prior to January 1, 1982, it is concluded that the applicant 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.