



U.S. Citizenship  
and Immigration  
Services

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invasion of personal privacy



FILE: [Redacted]  
MSC-05-176-13269

Office: NEW YORK

Date: JUN 14 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 read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

PHOTIC COPY

**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, 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 submitted additional documentation to establish his 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. 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 applicant filed a Form I-687, Application for Status as a Temporary Resident, and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, with CIS on March 25, 2005. Part 30 of this application requests the applicant to list all of his residences in the United States since his first entry. The applicant provided his first residence in the United States as 209 West 119 Street, New York, New York from 1989 until 1990. Part 33 of this application requests the applicant to list his employment history in the United States since his entry. The applicant responded that he was employed with Express Delivery, located in New York, New York from April 1991 until August 1993. The applicant testified during his Form I-687 interview on November 28, 2005 that he did not attend school in the United States. The applicant's failure to provide information on his residence, employment or school history during the requisite period detracts from the overall credibility of his claim.

The applicant submitted with his application as corroborating evidence numerous postcards and letter envelopes from Mail. These documents are not credible evidence of the applicant's

residence in the United States during the requisite period because they do not contain postage stamps and are not postmarked. The submission of these documents also detracts from the overall credibility of the applicant's claim.

On January 24, 2006, the applicant received a Notice of Intent to Deny (NOID). The NOID states that the, "[u]nstamped postcards that you submitted does not support your claim of your physical presence in unlawful status in [the] U.S. That being the case, you have failed to submit documents that would constitute [by] a preponderance of evidence as to your residence in the United States during the statutory period." The applicant responded to the NOID with a notarized letter, which provides, "I would like to explain to you, that I came to the U.S.A. on May 11, 1981, to Atlanta, Georgia. I left Georgia and came to New York in 1982. Before coming to New York, I lived in Atlanta, Georgia in 1981 with my uncle [REDACTED]. The applicant submitted with this letter four stamped and postmarked envelopes from Mali, with postmarked dates of August 8, 1981, December 15, 1981, December 20, 1981, January 25, 1982. These envelopes are addressed to [REDACTED] Atlanta, Georgia. While these documents provide evidence that the applicant resided in the United States from prior to January 1, 1982, they do not, alone, establish his continuous residence in the United States during the requisite period.

On appeal, the applicant submitted his hospital invoice from the Harlem Hospital Center. This invoice is dated March 19, 1982. The applicant also submitted a bank statement and a telephone invoice for his uncle, Sekou Traore, dated September 30, 1983 and October 1, 1983, respectively. However, these documents cannot be afforded any weight as corroborating evidence since [REDACTED] has not provided any type of written statement indicating that he resided with the applicant in New York. Therefore, the question remains whether the Harlem Hospital Center invoice and the four aforementioned postmarked envelopes submitted by the applicant are sufficient to establish by a preponderance of the evidence the applicant's continuous residence in the United States during the requisite period. These documents range in the time span of August 8, 1981 until March 19, 1982. The period in question is from prior to January 1, 1982 through the date the applicant 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. The applicant has not submitted any other documentation subsequent to March 19, 1982 to establish his residence in the United States during the requisite period. Consequently, the applicant has not met his burden of proof in these proceedings.

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.