



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

21

FILE:

MSC-05-260-12804

Office: CLEVELAND

Date:

JUN 19 2007

IN RE:

Applicant:

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 "R. Wiemann", written over a faint, illegible stamp.

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, Ohio, 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 she had continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that she 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 asserts she has lived in the United States during the requisite period. The applicant submitted a written description of her residence in the United States during this period of time. The applicant's written statement also attempts to explain the reason she does not have any other evidence pertaining to her residence in the United States during this time 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 she resided in the United States from prior to January 1, 1982 through the date she 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 record shows that 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 June 17, 2005. Part 30 of the application requests the applicant to list all of her residences in the United States since her first entry. The applicant responded that she first resided at Hotel [REDACTED] Street, New York, New York. The applicant indicated that she resided at this address from October 1981 until December 1989. Part 32 of the application requests the applicant to list her absences from the United States. The applicant provided that she returned to the Czech Republic in December 1989 and remained there until August 1998. Although the applicant claims that she resided in the United States from October 1981 until December 1989, she has failed to establish by a preponderance of the evidence her residence in the United States during this period.

The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of evidence to establish proof of residence in the United States during the requisite period. Examples of documentation that can be submitted include: past employment records; utility bills; hospital or medical records; attestations by churches, unions or other organizations; deeds, mortgages, contracts to which the applicant has been a party; and letters or correspondence between the applicant and another person or organization. The applicant has failed to provide such corroborating evidence.

An applicant may also provide “any other relevant document” as proof of her residence. 8 C.F.R. § 245a.2(d)(3)(vi)(L). The applicant submitted a notarized statement from her father, [REDACTED]. This statement provides that [REDACTED] entered the United States with his daughter in October 1981 and they resided together at [REDACTED] New York, New York. [REDACTED] has provided as an attachment to his statement, a letter from the manager of [REDACTED], located at [REDACTED], New York, NY. This letter, dated May 28, 1987, provides “[t]his letter is to certify that [REDACTED] and his family had [sic] been living at the [REDACTED] [sic] at [REDACTED] New York NY 10019 from October 1981 until present.” [REDACTED] also provided a letter from the store manager of Polska Mart & Deli, located in Brooklyn, New York, which provides, [REDACTED] worked part time for us from May 1987 to July 1988. During this time he worked around 20 hours per week as a cashier and was responsible for stocking the shelves.”

The applicant’s documentation of her residence in the United States during the requisite period is, therefore, limited to her father’s statement and two documents showing her father’s residence in the United States. The applicant claims that she resided in the United States from October 1981 until December 1989. On this basis, the applicant resided in the United States from the age of six (6) years until the age of fourteen (14) years. It is therefore reasonable to expect her to provide at least some additional documentation of her residence in the United States during the requisite period. On appeal, the applicant provides the following explanation related to her lack of documentation:

The only documents where I could prove we were here are a letter [sic] from a hotel and my father’s employer. My father was most of the time self employed, the only time he worked for a company was a time [sic], when he was expecting legalization. It didn’t happen and he lost the job. These two documents he expected to use in Czech to help him to find a new job. That’s all what [sic] my parents could find after almost 20 years. There was no space to take with us a lot of things in the limited space of 2 bags per person, which you can take in the airplane. Especially if you have to pack everything you have. There was nothing waiting for us in the Czech Republic, everything was taken by government [sic] after we emigrated from the country. And nobody expected we would need more evidence in 17 years.

The applicant’s statement does not overcome the finding that she has failed to satisfy her burden of proof in this proceeding. As stated above, the applicant can provide any relevant

documentation as proof of her residence during the requisite period. Examples of such documents are letters from friends and neighbors, medical documents and school records. The only relevant document the applicant has submitted is a statement from her father. The regulation at 8 C.F.R. § 245a.2(d)(6) provides that, “[t]he sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility.” Here, the submitted evidence is not probative of the applicant’s residence in the United States during the requisite period. The applicant has not met her burden of establishing by a preponderance of the evidence that she resided in the United States during the requisite period.

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 she has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the date she attempted to file a Form I-687 application with the Service, 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.