



U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE: [Redacted]
MSC-06-061-10162

Office: LOS ANGELES

Date: JUN 20 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

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, Los Angeles, 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 provides two additional affidavits and asserts that he has resided in the United States for more than twenty-five years.

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 November 30, 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 showed his first address in the United States to be at "ITT/Base Services Inc. United States Nava F. [sic]." At part #33 where applicants were asked to list employment in the United States since entry, the applicant did not list any employment.

In support of his Form I-687 application the applicant provided over thirty documents, including letters and certificates. This documentation included multiple letters confirming periods of employment of the applicant with contractors of the United States Naval Air Facility in Midway Island starting in approximately 1986. Only one of these letters, from [REDACTED] Acting Project Manager of ITT Base Services, Inc., purports to confirm employment or presence of the applicant in the United States since prior to January 1, 1982. Specifically, the letter from [REDACTED] states that the applicant was employed as an Electrical Repairman from October 1, 1981 to March 12, 1986. This letter was printed on ITT Base Services Inc. company letterhead, which lists only a post office box address and provides no contact telephone number. Aside from the applicant's job title, all the detail provided in this letter is identical to a letter the applicant provided from [REDACTED] Project Manager, confirming the applicant's employment as an electrician with ITT Base Services from June 2, 1986, through July 14, 1988.

In his I-687 filing, the applicant also included documents that tend to prove he was in Sri Lanka until after January 1, 1982. For example, the applicant submitted a letter from [REDACTED] Electrical Engineer, dated August 31, 1982, which confirms the applicant's employment as an electrician for Sri Lanka State Flour Milling Corporation "since 1980." The applicant also submitted an "office memo" printed on letterhead of the Sri Lanka Ports Authority and signed by an individual whose name is indecipherable. This memo was dated January 8, 1985, and stated that the applicant, "is employed as an [sic] Skilled Electrician in permanent services of this Authority since from [sic] 1970 August" The applicant included an additional document that contradicts his claim on Form I-687 that he has resided in the United States since 1980. This document is a certificate indicating that the applicant passed a three-month training course in air conditioning and refrigeration at a training institute in Moratuwa, Sri Lanka, that was held from August 17, 1981 to November 12, 1981.

At his interview with a CIS officer on May 3, 2006, the applicant stated that he came to the United States in October 1981. This statement conflicts with Form I-687, where the applicant indicated he began residing in the United States in 1980. The applicant testified that he met his wife, who is the mother of his children, in Sri Lanka in 1983. The applicant stated that all of his three children were born in Sri Lanka, in December 1984, February 1986, and August 1990. The officer's notes indicate the applicant stated he came to the United States in a legal status working with a contractor. The officer had the applicant sign a sworn statement that appears to indicate applicant was in the United States in lawful immigration status until 2003. It is noted that the applicant provided photocopies of his passports that indicate he received multiple B-1 visa stamps in connection with his work for [REDACTED] from 1986 to 1991.

In denying the application the director noted that the applicant appeared to have been in legal status in the United States until 2003. The director found that the applicant failed to establish continuous unlawful residence for the statutory period.

On appeal the applicant provided two additional affidavits. The first was a form affidavit from [REDACTED]. This affidavit provides no detail regarding the circumstances under which the affiant and the applicant became acquainted, and it does not specify the addresses at which the applicant resided while acquainted with the affiant. No contact telephone number, identity documentation, or documentation of presence in the United States during the statutory period is provided for the affiant. The second affidavit was provided by [REDACTED]. This affidavit does not include information regarding the manner in which the applicant and the affiant became acquainted, and does not indicate the addresses at which the applicant resided while in the United States. The affidavit lists the applicant's current address in California, as well as the affiant's current California address. The affidavit does not explain how the affiant can confirm the applicant's presence in the United States since January 1, 1982 when, according to Form I-687, the applicant did not come to California until 2004, and there is no indication the affiant has ever lived anywhere but California. No documentation of identity or presence in the United States during the statutory period is provided for the affiant.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the period from January 1, 1982 to approximately 1985, and he has submitted affidavits that lack sufficient detail. In addition, the applicant has submitted documents that show he was in Sri Lanka at least until 1985. Lastly, the applicant's testimony at his CIS interview regarding his time of entry into the United States conflicts with the information provided on Form I-687.

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 contradictory statements contained in the applicant's I-687 application and the record of the applicant's CIS interview, the evidence provided by the applicant that indicates he did not enter the United States until some time after January 1, 1982, and 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.