



U.S. Citizenship
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FILE: 
MSC 04 338 10389

Office: Chicago

Date: **MAY 15 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:



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, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director determined that 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 (the Service), now Citizenship and Immigration Services (CIS), in the original legalization application period between May 5, 1987 to May 4, 1988. Therefore, the district director concluded 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, counsel reiterates the applicant's claim of residence in this country for the requisite periods. Counsel asserts that the affidavits submitted in support of the applicant's claim of residence in the United States for the period in question are sufficient to establish such claim by a preponderance of the evidence.

An alien applying for adjustment to temporary resident status must establish that he or she entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through the date the application is filed. See Section 245A(a)(2)(A) of the Immigration and Nationality Act (Act) and 8 C.F.R. § 245a.2(b).

An alien 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. See Section 245A(a)(3) of the Act and 8 C.F.R. § 245a.2(b)(1).

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. See Paragraph 11, page 6 of the CSS Settlement Agreement and paragraph 11, page 10 of the Newman Settlement Agreement.

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. *See* 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 including affidavits 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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to establish continuous residence 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 from May 5, 1987 to May 4, 1988.

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 September 1, 2004. The applicant indicated during his I-687 interview that he first entered the United States from Canada without inspection in January 1981 and had resided continuously in the United States since that date.

The record contains the following documentation relating to the applicant’s residence in the United States during the requisite period:

1. a letter dated April 30, 2002, from [REDACTED] of Chicago, Illinois, stating that he met the applicant in mid-1983 when the applicant approached him seeking employment;
2. a letter dated April 30, 2002, from [REDACTED] of Chicago, Illinois, stating that he first met the applicant in 1984-85 at his brother's business office;
3. a letter from [REDACTED] of Mumbai, India, stating that he has known the applicant all his life and that the applicant "somehow managed to go to Canada" in the late 1980's, and thereafter moved to the United States; and,
4. a letter from [REDACTED] of Mumbai, India, stating that he has known the applicant since January 1, 1966, and stating that the applicant "managed to go to Canada" in the mid-1980's, and thereafter moved to the United States.

On May 12, 2005, the applicant appeared at the Chicago, Illinois, CIS office for his legalization interview. According to the notes of the interviewing officer, the applicant stated that he first entered the United States without inspection from Canada by car in January 1981. The applicant did not provide any additional evidence to establish his continuous residence in the United States during the requisite period.

On October 17, 2005, the applicant was requested to provide additional evidence to establish continuous residence in the United States from prior to January 1, 1982 through the date of filing the application; and to establish that he was continuously physically present in the United States during the period beginning on November 6, 1986 until the date of filing the application. Counsel for the applicant, in response, asserted that the applicant's affidavits and his own testimony are sufficient to establish the applicant's eligibility for temporary resident status by a preponderance of the evidence. Counsel did not submit any additional evidence in support of the applicant's claim of continuous residence in the United States throughout the requisite period.

The district director denied the application on December 22, 2005, because the applicant failed to establish continuous residence in the United States from prior to January 1, 1982 through the date of filing the application; and the applicant failed to establish that he was continuously physically present in the United States during the period beginning on November 6, 1986 until the date of filing the application.

On appeal, counsel contends that CIS failed to forward his denied Form I-687 application for review by the Special Master as required by the CSS/Newman Settlement Agreements. The applicant's Form I-687 was denied because he failed to maintain continuous physical presence in the United States after November 6, 1986 through the date he attempted to file a Form I-687 application with the Service in the original legalization application period between May 5, 1987 to May 4, 1988 as required by both section 245A(a)(3) of the Act and 8 C.F.R. § 245a.16(b). As the applicant's Form I-687 application was denied on the basis of his failure to maintain

the applicant's Form I-687 application was denied on the basis of his failure to maintain continuous physical presence in this country for the requisite period rather than his failure to establish a claim to class membership, the denial decision is not subject to the review of the Special Master. See Paragraph 9, page 5 of the CSS Settlement Agreement and paragraph 9, pages 7-9 of the Newman Settlement Agreement. Therefore, counsel's contention that CIS failed to follow the proper procedures in denying the applicant's Form I-687 application as specified in the CSS/Newman Settlement Agreements cannot be accepted.

Counsel's statements on appeal regarding the sufficiency of the evidence submitted by the applicant in support his claim of continuous residence in this country for the requisite period have been considered. However, none of the four letters submitted by the applicant relate to his residence in the United States from prior to January 1, 1982 to mid-1983. The applicant has not submitted any evidence to corroborate his claim of entry into the United States prior to January 1, 1982, and continuous residence in this country from that date to mid-1983.

Furthermore, neither Joseph Cirignani nor Daniel Cirignani provides verifiable information such as the applicant's address (es) in the United States during the period of their acquaintance with the applicant.

██████████ and ██████████, both residents of Mumbai, India, state in their affidavits that they were told the applicant entered Canada "in late 1980's" and thereafter moved to the United States. These statements contradict the applicant's claim that he first entered the United States in January 1981. The applicant has not provided any explanation for these discrepancies.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, it is incumbent on the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

The absence of sufficiently detailed supporting documentation that provides testimony 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. The applicant has failed to submit sufficient credible documentation to meet his burden of proof in establishing that he has resided in the United States since prior to January 1, 1982 by a preponderance of the evidence as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M-*, 20 I&N Dec. at 77.

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 as required under section 245A(a)(2) of the Act. 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.