



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED]
MSC-04-331-21322

Office: NEW YORK

Date: NOV 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:

[REDACTED]

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. [REDACTED] LKK (E.D. Cal) January 23, 2004, and *Felicity Mary Newman, et al., v. United States Immigration and Citizenship Services, et al.*, CIV. NO. [REDACTED] (C.D. Cal) February 17, 2004, (CSS/Newman Settlement Agreements) was denied by the District Director, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined the applicant had failed to provide any tangible evidence or credible documentation to attest to his claimed presence in the United States during the statutory time frame. The director erroneously stated that the statutory time frame was from January 1, 1982 through May 4, 1988, instead of from prior to January 1, 1982 through the time the applicant attempted to file his application for temporary residence.

On appeal, the applicant stated that he had submitted affidavits from three United States citizens with full knowledge of his residency in the United States since 1981. The applicant stated that the director's decision focused on the probative value of a particular affidavit. The applicant explained that the affiant's birth certificate had been provided. The applicant also provided the affiant's telephone number. The applicant reiterated that he is eligible for temporary resident status. Lastly, the applicant attached documentation that he had already provided in support of his application.

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).

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 applicant 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 applicant 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 and 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 Citizenship and Immigration Services (CIS) on August 27, 2004. 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 listed the following New York, New York addresses during the requisite period: [REDACTED] to January 1985; and [REDACTED] from February 1985 to April 1990. At part #33 where applicants were asked to list all employment in the United States since entry, the applicant listed only one employment position during the requisite period: vendor of cosmetics at [REDACTED] New York, New York from February 1982 to November 1990.

In response to a Notice of Intent to Deny Application for Status as a Temporary Resident issued on November 16, 2005, the applicant submitted the form affidavit of Astou Thiam dated December 14, 2005. The form states, ". . . to his personal knowledge the applicant has resided in the United States as follows: (city, town, and state) from (month) (year) to (month) (year)." Above the words, "(city, town and state)," the affiant stated "1986 New York," and above "(month) (year) to (month) (year)," the affiant stated "1985 to present." In this context, the meaning of the words "1986 New York" is unclear. The form also states the affiant "is able to determine the date of the beginning of [his] acquaintance with the applicant in the United States from the following fact(s):" after which the affiant has stated, "we used to live at the same hotel located at [REDACTED]. The affiant also stated that the longest period during the residence described in which he has not seen the applicant is, "frequently." Due to the affiant's failure to list both of the applicant's addresses during the requisite period, his unclear reference

to "1986 New York," and his statement that the longest period in which he has not seen the applicant is "frequently," this affidavit is found to lack sufficient detail.

The applicant also provided a form affidavit from [REDACTED] dated December 13, 2005. In this affidavit, the affiant stated that, to his personal knowledge, the applicant has resided in the United States in New York City from 1981 to present. Where the form asks the affiant to indicate how he is able to determine the date of the beginning of his acquaintance with the applicant in the United States, the affiant stated, "met as business vendor on 14 Street, in 1981." This information is found to be inconsistent with the information provided by the applicant on Form I-687 where he indicated he began working as a vendor in New York in 1982. In addition, since the affiant failed to list the applicant's addresses during the requisite period, this affidavit is found to lack sufficient detail.

In response to a second Notice of Intent to Deny issued on March 15, 2006, the applicant provided a form affidavit from [REDACTED]. The affiant stated that, to his personal knowledge, the applicant has resided in the United States in New York City from 1981 to present. Where the form asks the affiant to indicate how he is able to determine the date of the beginning of his acquaintance with the applicant in the United States, the affiant stated, "Vendor on 14 Street in 1981." This information is found to be inconsistent with the information provided by the applicant on Form I-687 where he indicated he began working as a vendor in New York in 1982. In addition, since the affiant failed to list the applicant's addresses during the requisite period, this affidavit is found to lack sufficient detail.

The director determined the applicant had failed to provide any tangible evidence or credible documentation to attest to his claimed presence in the United States during the statutory time frame.

On appeal, the applicant stated that he had submitted affidavits from three United States citizens with full knowledge of his residency in the United States since 1981. The applicant stated that the director's decision focused on the probative value of [REDACTED] affidavit. The applicant explained that [REDACTED] birth certificate had been provided. The applicant also provided Mr. [REDACTED] telephone number. The applicant reiterated that he is eligible for temporary resident status. Lastly, the applicant attached documentation that he had already provided in support of his application, including [REDACTED] birth certificate and [REDACTED] affidavit and driver's license.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period, and has submitted affidavits that lack sufficient detail or conflict with the applicant's statements. Specifically, the affidavit from [REDACTED] lacks sufficient detail, and the affidavits from [REDACTED] lack sufficient detail and conflict with the applicant's statements.

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 supporting affidavits, 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.