

U.S. Citizenship  
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[REDACTED]

FILE: [REDACTED]  
MSC-05-082-10025

Office: NEW YORK

Date: **NOV 21 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. 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. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant submitted a Form I-687, Application for Status as a Temporary Resident Under Section 245A of the Immigration and Nationality Act (Act), and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, on December 21, 2004. The director determined the applicant had failed to submit additional evidence in response to the Notice of Intent to Deny (NOID). The NOID indicated the applicant had failed to submit documents that would constitute a preponderance of evidence as to her residence in the United States.

On appeal, the applicant explained that her application is consistent with the declaration she made during her interview with an immigration officer. She stated that she is eligible for temporary residence and that she had submitted an affidavit from a United States citizen who can be contacted by telephone. The applicant also provided another affidavit from a United States citizen who confirms she has known the applicant in the United States since 1987.

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 Act, 8 U.S.C. § 1255a(a)(2). The applicant must also 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). The regulations clarify that the applicant must have been physically present in the United States from November 6, 1986 until the date of filing the application. 8 C.F.R. § 245a.2(b)(1).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), "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. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

The applicant 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. Here, the submitted evidence is not relevant, probative, and credible.

The record includes the Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet the applicant submitted to Citizenship and Immigration Services (CIS) on December 21, 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 only [REDACTED] New York, New York from December 1981 to October 1988 during the requisite period.

The applicant also provided a declaration from [REDACTED]. The declarant stated that she has known the applicant since 1981 in New York City at Lenox City Complex in Queens. The declarant did not specifically confirm the applicant resided in the United States during the requisite period. In addition, the declarant's statement may imply that the applicant has lived in Queens since 1981. This is inconsistent with the applicant's statements on Form I-687. Specifically, the applicant stated in Form I-687 that she lived only at [REDACTED] a Manhattan address, rather than in Queens, during the requisite period.

In denying the application, the director determined the applicant had failed to submit additional evidence in response to the Notice of Intent to Deny (NOID). The NOID indicated the applicant had failed to submit documents that would constitute a preponderance of evidence as to her residence in the United States.

On appeal, the applicant explained that her application is consistent with the declaration she made during her interview with an immigration officer. She stated that she is eligible for temporary residence and that she had submitted an affidavit from a United States citizen who can be contacted by telephone. The applicant also provided an affidavit from [REDACTED] stated that he has known the applicant since 1987, and became acquainted with her at a friend's party at [REDACTED]. They became close friends and on several occasions [REDACTED] visited the applicant at her apartment at Lefrak City, Queens. Again, this declaration fails to specifically confirm the applicant resided in the United States during the requisite period. In addition, [REDACTED] described visiting the applicant at her apartment in Queens, although the applicant listed only a Manhattan address on Form I-687 during the requisite period. Therefore, the declarant's statements are not found to confirm the applicant's residence during the statutory period in a manner that is consistent with her statements on form I-687.

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 declarations that do not clearly confirm her residence in the United States during the requisite period. Specifically, the declarations from [REDACTED] fail to confirm the applicant resided in the United States during the requisite period.

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 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 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.