

U.S. Citizenship
and Immigration
Services



identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

[REDACTED]

FILE:

Office: NEW YORK

Date:

NOV 29 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.

A handwritten signature in black ink, appearing to read "R. 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, 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 June 17, 2005. The director determined that the applicant had failed to submit additional evidence in response to the Notice of Intent to Deny (NOID). The NOID stated that the applicant had not demonstrated eligibility for temporary resident status.

On appeal, the applicant's counsel stated that due weight was not accorded to the affidavits he submitted.

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 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 Immigration and Naturalization Service (INS) 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 Form I-687 Supplement, CSS/Newman Class Membership Worksheet, submitted by the applicant to Citizenship and Immigration Services (CIS) on June 17, 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 listed only the following address during the requisite period: [REDACTED], Bronx, New York from September 1981 to December 1992. At part #31 where applicants were asked to list all affiliations or associations, clubs, organizations, churches, unions, businesses, etc., the applicant stated nothing.

The record also includes multiple declarations. The declaration from [REDACTED] states that she met the applicant in 1981 when he was first introduced to her by her boyfriend in church. The declarant stated that she met the applicant regularly at church. This declaration fails to specifically confirm the applicant resided in the United States during the requisite period. In addition, the declaration is inconsistent with the information provided on Form I-687, where the applicant provided no information when asked to list all associations with churches.

The record includes an affidavit from [REDACTED]. The affiant confirmed the applicant's address during the requisite period as listed on the Form I-687. The affiant stated that the applicant is personally known to her as a friend. The affiant failed to provide any information regarding the date or manner in which she became acquainted with the applicant. As a result, this affidavit is found to be lacking in detail.

The record also includes a declaration from [REDACTED] Church Administrator of Christ Gospel Church in Silver Spring, Maryland. The declarant stated that the applicant visited the church in 1981 as a guest of one of the members. The church assisted the applicant because he was unemployed. The applicant continued to worship with the church anytime he was in town for a visit. This letter fails to specifically confirm the applicant resided in the United States during the requisite period. In addition, the declaration is inconsistent with the information provided on Form I-687, where the applicant provided no information when asked to list all associations with churches. Lastly, this declaration does not conform to regulatory standards regarding attestations by churches. Specifically, the declaration does not show the inclusive dates of membership or state the address where the applicant resided during the membership period. 8 C.F.R. § 245a.2(d)(3)(v).

In denying the application, the director stated that the applicant had failed to submit additional evidence in response to the NOID. The NOID stated that the applicant had not demonstrated eligibility for temporary resident status. The director noted the applicant failed to submit evidence of his entry into the United States. In addition, the affidavits he submitted appeared neither credible nor amenable to verification.

On appeal, the applicant's counsel stated that due weight was not accorded to the affidavits he submitted.

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 and declarations that fail to confirm he resided in the United States during the requisite period, conflict with the information provided on Form I-687, fail to conform to regulatory standards, or lack sufficient detail. Specifically, the declaration from [REDACTED] fails to confirm the applicant resided in the United States during the requisite period and is inconsistent with the information provided on Form I-687. The affidavit from [REDACTED] lacks sufficient detail. The declaration from [REDACTED] fails to specifically confirm the applicant resided in the United States during the requisite period, is inconsistent with the information provided on Form I-687, and does not conform to regulatory standards.

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 declarations, and 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 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.