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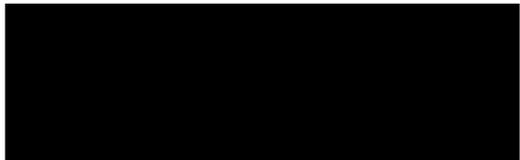


U.S. Citizenship  
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FILE:



Office: NEW YORK

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OCT 05 2007

MSC-05-260-17778

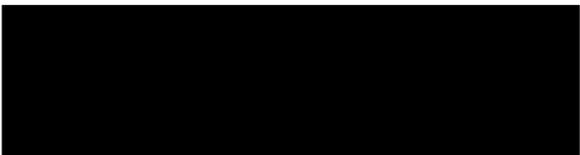
IN RE:

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.

A handwritten signature in cursive script, 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, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined the applicant had not demonstrated by a preponderance of the evidence that he is eligible for legalization. As a result, the director denied the application.

On appeal, the applicant suggested the director failed to accord due weight to the affidavits submitted by the applicant.

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 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 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 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 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 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 showed his only address during the requisite period to be [REDACTED] from June 1981 to May 2001. At part #31 where applicants are asked to list all affiliations or associations, clubs, organizations, churches, unions, businesses, etc., the applicant listed nothing. The applicant initially submitted no documentation in support of his Form I-687 application.

In response to a Notice of Intent to Deny Application for Status as a Temporary Resident issued on November 15, 2005, the applicant submitted the form affidavit of [REDACTED]. This affidavit states that the applicant is a friend of the affiant and that the applicant resided at [REDACTED] from June 1981 to May 2001. This affidavit fails to include any information regarding the manner in which the applicant and the affiant became acquainted or the date on which they met. As a result, this affidavit is found to be lacking in detail.

The applicant also provided a form affidavit from [REDACTED] also stated he is a friend of the applicant and that the applicant resided at [REDACTED] from June 1981 to May 2001. This affidavit also fails to include any information regarding the manner in which the applicant and the affiant became acquainted or the date on which they met. As a result, this affidavit is also found to be lacking in detail.

In response to an additional Notice of Intent to Deny (NOID) issued on March 23, 2006, the applicant provided a declaration form for [REDACTED] and containing [REDACTED] notarized signature. In this declaration, [REDACTED] explained that he has known the applicant since 1984 as a member of his

African Methodist Church and a member of their "town's association." This declaration is found to be inconsistent with the information provided on Form I-687. Specifically, the applicant omitted any reference to membership in the African Methodist Church or a town association where asked for this information at part #31 of Form I-687. In addition, this declaration fails to specifically confirm the applicant's residence in the United States throughout the requisite period.

In denying the application, the director did not specifically address the documents from [REDACTED] and [REDACTED] but stated that the applicant failed to provide tangible or credible documentation to attest to his claimed presence during the statutory period. The director found the applicant had not demonstrated by a preponderance of the evidence that he is eligible for legalization.

On appeal, the applicant suggested the director failed to accord due weight to the affidavits submitted by the applicant.

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 affidavits from [REDACTED] [REDACTED] sufficient detail, and the declaration from [REDACTED] conflicts with the applicant's statements 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 supporting declaration, 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.