

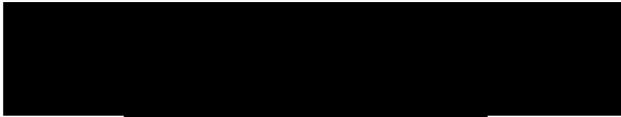


U.S. Citizenship  
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FILE: [REDACTED]  
MSC-05-160-10349

Office: NEW YORK

Date: **SEP 06 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: SELF-REPRESENTED

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 "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 failed to submit credible documents that would constitute a preponderance of evidence as to his residence in the United States during the statutory period.

On appeal, the applicant explained that Citizenship and Immigration Services (CIS) could not have a record of the applicant's first entry into the United States because he entered without inspection. The applicant also questioned whether the director had reviewed the applicant's affidavits. The applicant listed the documentation he had already submitted. He also provided an additional copy of one of the affidavits, together with a copy of the affiant's driver's license and visa to enter the United States.

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 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 March 9, 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 address during the requisite period to be [REDACTED] New York, New York from October 1980 to January 1989. At part #33 where applicants were asked to list all employment in the United States since entry, the applicant showed his only employment during the requisite period to be as a street vendor along [REDACTED] in Harlem, New York, New York from October 1980 to January 1989. With his application, the applicant included a very detailed form affidavit from [REDACTED]. In this affidavit, the affiant stated that the applicant came to New York on October 17, 1980. He also stated, "I was living at [REDACTED], New York, NY 10025 and [the applicant] was my guest for the longest." The affidavit form described multiple attempts by the applicant and the affiant to apply for legalization. However, the affidavit does not specifically confirm the applicant's residence in the United States for any specific dates within the requisite period prior to June 1987 when they first attempted to apply for legalization. In addition, although not required, the affiant provided no evidence of his presence in the United States during the requisite period.

At his interview with an immigration officer on February 9, 2006, the applicant submitted an additional affidavit from [REDACTED], in both handwritten and typewritten formats. The affiant stated that he is "writing this letter on behalf of a friend since 1981 and he has helped me and my children." This affiant also failed to specifically confirm that the applicant resided in the United

States for any specific dates during the requisite period. Although not required, the affiant provided no evidence of his presence in the United States during the requisite period.

In a Notice of Intent to Deny (NOID) issued on February 14, 2006, the director explained that CIS contacted the affiant [REDACTED]. The director stated about [REDACTED] "it appears he has no direct personal knowledge of the events and circumstances surrounding your entry and residence. There is also no direct proof that [REDACTED] was in the United States during the statutory period in question."

In response to the NOID, the applicant provided two additional affidavits. In the affidavit from [REDACTED], the affiant stated she has known the applicant "for 26 [years] since the early 80'[sic]." She stated she "[w]orked in or about September in the vicinity, where [she] was employed as a sales clerk." The affiant explained that the applicant sold merchandize including handbags, and the affiant would occasionally purchase items from him. She explained that she has seen the applicant throughout the years and still sees him whenever she needs a cab. Again, this affiant did not make any specific statements regarding the dates the applicant resided in the United States during the requisite period. As a result, this affidavit does not serve as evidence that the applicant resided in the United States throughout the requisite period. Although not required, the affiant did not provide evidence that she was present in the United States throughout the requisite period.

The applicant also provided an affidavit from [REDACTED]. [REDACTED] stated that he has known the applicant "since 1980 at [REDACTED] New York, New York . . . while he has been living at this time I worked in this building." The affiant also stated that the applicant has dealt with him as a close friend. Again, the affiant did not provide the specific dates during which the applicant resided at the address where the affiant was employed. This affidavit does not confirm the applicant resided in the United States throughout the requisite period. Although not required, the affiant did not provide evidence that he was present in the United States throughout the requisite period. The record indicates the affiant was contacted by an immigration officer. The affiant stated that he met the applicant in 1981/1982 and did not see the applicant much in the 1980s. The record of the affiant's statements to the immigration officer is inconsistent with the affidavit. Specifically, the affiant stated in the affidavit that he has known the applicant since 1980, while he stated to the immigration officer that he has known the applicant since 1981/1982. This inconsistency further calls into question whether the affiant can actually confirm the applicant resided in the United States throughout the requisite period.

In denying the application, the director explained that, since [REDACTED] said that he saw the applicant very little in the 1980s, it would be difficult for him to attest to the applicant's presence in the United States during the statutory period. In addition, the director referred to [REDACTED] lack of knowledge of basic information regarding the applicant, despite claiming to be a close friend of the applicant. The director also referred to the lack of evidence that [REDACTED], another affiant, had direct personal knowledge of the events and circumstances of the applicant's residency.

On appeal the applicant provided another copy of [REDACTED] affidavit. He also explained that he entered without inspection and, as a result, CIS would have no record of this entry. The applicant also questioned whether the director actually reviewed the affidavits submitted by the applicant. The applicant also referred to having submitted "envelopes of correspondence" from his relatives during the requisite period. These envelopes are not found in the record.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period. He has submitted affidavits that do not specifically confirm his residence in the United States throughout the requisite period or conflict with oral statements made by the affiant to the immigration officer. None of the affiants specifically confirmed the applicant resided in the United States throughout the requisite period, or for any specific length of time during the requisite period. In addition, [REDACTED] oral statements to the immigration officer indicated he had no direct personal knowledge of the events and circumstances surrounding the applicant's residence in the United States. Lastly, [REDACTED] affidavit was inconsistent with his oral statement to the immigration officer regarding the date he met the applicant, and he stated orally that he did not see the applicant much in the 1980s. This calls into question [REDACTED] ability to confirm the applicant's residence throughout 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 contradictions between the affidavits and the affiants' statements to the immigration officer, 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.