



U.S. Citizenship  
and Immigration  
Services

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LL

[REDACTED]

FILE: [REDACTED]  
MSC-04-331-21334

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:

[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, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined the applicant failed to submit additional evidence in response to the Notice of Intent to Deny (NOID) issued on March 21, 2006. Specifically, the applicant failed to submit credible documents that would constitute a preponderance of evidence as to his residence in the United States during the requisite period. As a result, the director denied the application.

On appeal, the applicant reasserted his eligibility for temporary resident status. He also explained his inability to obtain additional documentation based on the passage of time and the fact that he entered the United States illegally, and he requested that these circumstances be taken into consideration.

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 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 residences during the requisite period: [REDACTED] from December 1981 to October 1987; and [REDACTED] from December 1987 to February 2000. At part #33 where applicants were asked to list all employment in the United States since entry, the applicant showed his only employment in the United States to be as a self-employed vendor in New York, New York from April 1982 to present. The applicant initially provided no documentation in addition to the Form I-687 to support any aspect of his claim of continuous unlawful residence.

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 affidavit of [REDACTED]. In a form affidavit, Ms. [REDACTED] stated that she first met the applicant in December 1981 in New York "while he was a street vendor." The applicant also included identity documentation for the affiant including a New York State Benefit Identification card and a computer screen printout containing the affiant's photo. This affidavit is inconsistent with the information provided in the Form I-687. Specifically, the applicant indicated he did not begin working as a vendor until April 1982. This inconsistency calls into question whether the affiant actually can confirm the applicant's residence during the requisite period. In addition, the

affidavit did not specifically confirm the applicant's residence in the United States throughout the requisite period. As a result, the affidavit is found to be lacking in detail.

During an interview with an immigration officer on March 21, 2006, the applicant was asked who he worked for during the period between January 1, 1982 and May 4, 1988. In response, the applicant stated that he was a dishwasher. This response is inconsistent with the information provided on the Form I-687. Specifically, the applicant indicated on the Form I-687 that he has only been employed in the United States as a vendor. This inconsistency calls into question whether the applicant actually resided in the United States throughout the requisite period.

An additional Notice of Intent to Deny (NOID) was issued to the applicant's address of record on March 21, 2006. In the NOID, the director explained that the applicant failed to provide evidence of his unlawful entry into the United States. The director also explained that CIS attempted to contact affiant [REDACTED] but was unable to contact her. The director also stated that the affiant has no direct personal knowledge of the events and circumstances of the applicant's residency. In addition, there was no proof that the affiant was present in the United States during the period in question. The NOID was returned by the postal service stamped, "unclaimed, unable to forward."

In denying the application the director noted that the applicant failed to respond to the NOID. The decision was sent to the applicant's address of record. The applicant timely appealed the decision.

On appeal the applicant reiterated his eligibility for temporary resident status. He also explained the difficulty in obtaining documentation after the passage of time and due to his unlawful status in the United States. The applicant did not attempt to explain the Service's inability to contact [REDACTED] or provide clarification regarding whether or not she had direct personal knowledge of the applicant's periods of residence in the United States.

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 one affidavit that lacks sufficient detail and conflicts with the applicant's testimony. Specifically, the affidavit from [REDACTED] conflicts with the applicant's statements on Form I-687 and fails to confirm the applicant's residence in the United States throughout the statutory period. In addition, the applicant's statements during his interview with the immigration officer conflict with his 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 affidavits, the inconsistency between the applicant's written and oral statements, 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.