



U.S. Citizenship  
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Services

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FILE: [REDACTED]  
MSC-05-312-14005

Office: NEW YORK Date:

**APR 02 2008**

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. If your appeal was dismissed or rejected, all documents have been returned to the National Records Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

A handwritten signature in black ink, appearing to read "D. Kuy", written over a horizontal line.

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. The director determined that the applicant had not established by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status for the duration of the requisite period. The director denied the application, finding that the applicant had not met his burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, the applicant provided additional evidence in support of his application for temporary resident status.

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).

For purposes of establishing residence and physical presence under the CSS/Newman Settlement Agreements, the term “until the date of filing” in 8 C.F.R. § 245a.2(b) means until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file during the original legalization application period of May 5, 1987 to May 4, 1988. 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 period, 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.* at 80. 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, 431 (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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on August 8, 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 the following addresses during the requisite period: [REDACTED], Bronx, New York from 1981 to February 1987; and [REDACTED], Bronx, New York from February 1987 to May 1993. At part #32 where applicants were asked to list all absences from the United States since entry, the applicant listed only a trip to Ecuador because of the death of his father, from July 8, 1987 to August 10, 1987.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided multiple documents that do not relate to the requisite period. The applicant also initially provided three attestations. The attestations from [REDACTED] and [REDACTED] fail to state that the applicant resided in the United States during the requisite period. The applicant also included an affidavit dated April 26, 2005 from [REDACTED]. This affidavit states that the applicant “has been our patient since 1982 and is still our patient for this office.” This affidavit fails to provide details including the applicant’s address during the requisite period, the frequency with which the applicant visited [REDACTED] during the requisite period, whether the

information provided was taken from medical records, and whether CIS can have access to the records. As a result, this affidavit is found to lack sufficient detail to confirm that the applicant resided in the United States during the requisite period.

On May 9, 2006, the director issued a Notice of Intent to Deny (NOID), in which she stated that the applicant had failed to establish by a preponderance of the evidence that he resided in the United States during the requisite period. Specifically, the director noted that the applicant failed to provide dental records to substantiate the claims of [REDACTED]. The director also noted that the applicant had stated in his interview with an immigration officer on March 8, 2006 (the interview) that he was married in Ecuador in 1987 and that he has a son who was born in Ecuador in 1985. The director indicated these statements were inconsistent with the applicant's claim to have only been absent from the United States for one month during 1987. It is noted that, without additional information regarding the location of the applicant's wife, the applicant's claim to have been in the United States throughout the requisite period except for one month in 1987 is not inconsistent with the fact that his son was born in Ecuador in 1985.

It is noted that a written record exists of the interview. When asked in the interview how he could have a son born in Ecuador in 1985 when his only absence from the United States was in 1987, the applicant stated that he went to Ecuador. When asked when he went to Ecuador, the applicant stated, "1987." The applicant's failure to provide any other explanation for his son's birth in Ecuador in 1985, including that his wife came to the United States during the time prior to his son's birth, casts some doubt on the applicant's claim to have resided in the United States throughout the requisite period.

In response to the NOID, the applicant provided a written statement dated June 7, 2006. The applicant stated that he was [REDACTED]'s patient since 1982 when she practiced out of her house, and she later moved to her current office. This information appears to be inconsistent with the letter provided by [REDACTED], in which she stated that the applicant "has been our patient since 1982 and is still our patient for this office," yet she failed to indicate that she initially practiced dentistry out of her home.

The applicant provided dental records indicating that he visited \_\_\_\_\_ on multiple dates from 1994 to 2003. This document casts some doubt on the credibility of the affidavit from [REDACTED] which states that the applicant has been a patient of [REDACTED]'s office since 1982, is not accompanied by any medical records from 1982 to 1993, and fails to mention the records for 1994 to 2003.

The applicant provided a birth certificate indicating his son, [REDACTED], was born in Ecuador on April 25, 1985. The absence of any evidence indicating the applicant was present at the birth of his son, this document is not relevant to the determination of whether the applicant resided in the United States during the requisite period.

The applicant provided two additional attestations, from [REDACTED] and [REDACTED] which fail to state that the applicant resided in the United States during the requisite period.

In denying the application the director noted that the applicant had not established by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status for the duration of the requisite period. The director noted that the dental records provided by the applicant regarding his visits to [REDACTED] did not relate to the requisite period. The director again raised the issue of an apparent inconsistency related to the birth of the applicant's son in Ecuador in 1985. Specifically, the director indicated the applicant had stated that he was married in Ecuador in 1987 and that his son was born in Ecuador in 1985, yet the applicant claimed his only absence from the United States occurred in 1987. As stated above, without additional information regarding whether the applicant's wife entered the United States during the period prior to the birth of the applicant's son, the applicant's claims that he resided continuously in the United States during the requisite period and that his son was born in Ecuador during the requisite period are not inconsistent. However, as also mentioned above, the applicant's answers to the officer's questions in the interview regarding this issue cast some doubt on whether the applicant actually resided in the United States continuously throughout the requisite period. The director also raised the issue of class membership. Since the director adjudicated the application on the merits, the director is found not to have denied the application for class membership.

On appeal, the applicant stated that he was [REDACTED]'s patient since 1982 when she practiced dentistry in her house before she moved to her office. This information is found to be insufficient to overcome the apparent inconsistency between the affidavit from [REDACTED] and the dental records submitted by the applicant. Specifically, [REDACTED] stated that the applicant "has been our patient since 1982 and is still our patient for this office," yet she failed to indicate that she initially practiced dentistry out of her home, explain that she only kept dental records for the applicant since 1994, or refer to the existence of any dental records. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Without a statement from [REDACTED] confirming the applicant's explanation of the apparent inconsistency in the record, the applicant's statement is found not to overcome this inconsistency.

The applicant also provided an affidavit from [REDACTED] dated August 26, 2006. The affidavit states that the applicant was physically present in the United States since 1981, when he met the affiant at a Christmas party of the affiant's family in the Bronx. This affidavit fails to include details regarding the region where the applicant resided throughout the requisite period, and the affiant's frequency of contact with the applicant during the requisite period. As a result, this affidavit is found to lack sufficient detail to confirm that the applicant resided in the United States during the requisite period.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the requisite period, and has submitted attestations that conflict with other documents in the record, fail to confirm that the applicant resided in the United States during the requisite period, or lack sufficient detail. Specifically, the attestations from [REDACTED] and [REDACTED] fail to confirm that the applicant resided in the United States during the requisite period. The affidavit from [REDACTED] lacks sufficient detail and conflicts with other documents in the record, and the affidavit from [REDACTED] lacks sufficient detail.

The absence of sufficiently detailed 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 apparent contradictions among the applicant's written and oral statements and the documents presented, and given his 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 for the requisite period 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.