



U.S. Citizenship
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FILE: [REDACTED]
MSC-06-029-12826

Office: NEW YORK

Date: **APR 11 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. 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. 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.

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).

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)(1) 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 or her 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 a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on October 29, 2005. The applicant signed this form under penalty of perjury, certifying that the information he provided is true and correct. 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 indicated that he lived at [REDACTED] Bronx, New York from January 1981 until June 1988. He also indicated that he was self-employed as a street vendor during the same period. On the Form I-687 Supplement, CSS/Newman Class Membership Worksheet, the applicant indicated that he entered the United States before January 1, 1982 but provided no evidence of such entry. In support of his initial I-687 application, the applicant submitted the following evidence:

1. A form affidavit from [REDACTED] dated December 14, 2005. [REDACTED] indicated that he resided at [REDACTED] Bronx, New York and that he has known the applicant since 1981. [REDACTED] did not indicate where or how he met the applicant other than that they were “acquaintances,” or how frequently or under what circumstances he saw the applicant during the requisite period, nor did he provide any other details regarding the events and circumstances of the applicant's residence in the United States that would tend to lend probative value to his statement. Moreover, he did not specifically state that he has direct, personal knowledge that the applicant continuously resided in the United States during the requisite period. For these reasons, this affidavit can be given only minimal weight as corroborating evidence.

2. A notarized declaration from [REDACTED] also dated December 14, 2005. [REDACTED] indicated that she resided at [REDACTED] Bronx, New York and that she met the applicant in January 1981 while selling newspapers, gloves and hats. She also declared that she has "seen [REDACTED] in the County of Bronx." However, [REDACTED] did not indicate when or how frequently she saw the applicant during the requisite period, nor did she provide any other details regarding the events and circumstances of the applicant's residence in the United States that would tend to lend probative value to her statement. Moreover, she did not specifically state that she has direct, personal knowledge that the applicant continuously resided in the United States during the requisite period. For these reasons, this affidavit can be given only minimal weight as corroborating evidence.
3. Three postcards that appear to have been sent to the applicant from individuals in Ghana, two in January 1981 and one in July 1988. The postcards appear to be authentic and provide some evidence that the applicant was present in the United States in January 1981 and living at the same address that he listed on his I-687 legalization application. They do not, however, provide evidence of his continuous residence throughout the statutory period as required by the terms of the CSS/Newman settlement agreements. Thus, the postcards provide evidence that the applicant was present in the United States in 1981 and again in 1988, but they do not offer any probative value with respect to the applicant's continuous residence between 1981 and 1988.
4. In response to the director's Notice of Intent to Deny the application, the applicant submitted one additional affidavit. In this affidavit, dated April 17, 2006, [REDACTED] indicated that she resided at [REDACTED] Bronx, New York. [REDACTED] indicated in the affidavit that that she met the applicant in "December 1981 at a Christmas Party." She did not indicate how frequently or under what circumstances she saw the applicant during the requisite period, nor did she provide any other details regarding the events and circumstances of the applicant's residence in the United States that would tend to lend probative value to her statement. Upon receiving this affidavit, the director contacted the affiant via telephone. The record of proceedings indicates that the affiant indicated over the telephone that she met the applicant while riding on the subway, which is inconsistent with her signed affidavit that indicates she met the applicant at a Christmas party. Because her statements were inconsistent, and because the affiant did not provide any details regarding the applicant's residence during the statutory period, this affidavit can be given only minimal weight as corroborating evidence. 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). Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. The applicant has not provided any explanation regarding the inconsistent information provided by the affiant in her written statements and in her verbal testimony.

The applicant did not submit any additional evidence on appeal. As is stated above, 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). The applicant has been given the opportunity to satisfy his burden of proof with a broad range of evidence pursuant to 8 C.F.R. § 245a.2(d)(3).

The absence of sufficiently detailed 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 applicant's reliance upon letters/affidavits 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 she 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.