

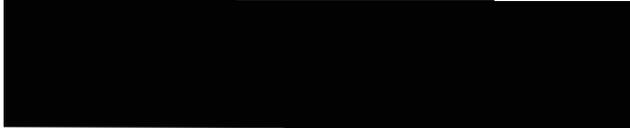
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
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Services

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FILE: [REDACTED]
MSC-05-355-12898

Office: NEW YORK

Date: APR 17 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 Benefits 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 "R. 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.

On appeal, the applicant asserts that the director's decision was erroneous and that he has submitted credible affidavits that are sufficiently supported by evidence and identification documents.

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 Supplement to Citizenship and Immigration Services (CIS) on September 20, 2005. In part # 33 of the Form I-687 application, the applicant indicated that he was employed by Gemro Restoration Construction Company from September of 1981 to May of 1984, and Style Painting & Home Improvement, Inc. from July of 1984 to June of 1988.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted an employment letter from the foreman of the Gemro Restoration Construction Company, in which he stated that the company employed the applicant from September of 1981 to May of 1984, and that during a period of his employment the applicant lived in the company dormitories. The applicant also submitted an employment letter from the president of Style Painting & Home Improvement, Inc., in which he stated that the company employed the applicant from July 1984 to June of 1988, and that he lived at [REDACTED], Sunnyside, New York. Here, the letters do not conform to the regulatory standards for attestations by employers. Specifically, they fail to specify whether the information was taken from official company records, and the availability of the company records for review. 8 C.F.R. § 245a.2(d)(3)(i). In addition, the letters are not accompanied by any personnel records, tax records, cancelled checks, or pay stubs to corroborate the applicant’s claim. Because the letters are lacking in detail and probative value, they can be accorded only minimal weight in establishing that the applicant resided in the United States throughout the requisite period.

In denying the application the director noted the multiple inconsistencies contained in the record regarding the applicants alleged employment history. The director noted that in response to the Notice of

Intent to Deny (NOID) the applicant stated that [REDACTED] of Style Painting and Home Improvement, Inc. started his business in early 1984, but that the company was not registered by the New York State, Department of State until May of 1985. The director also noted that although the Gemro Restoration Construction Company representative stated that the applicant was employed by the company in 1981, the State of New York had no record of such company being registered with them at any time.

On appeal, the applicant asserts that the director erroneously denied his application and that the affidavits he has submitted are accompanied by proper identifying documents. The applicant asserts that he was employed by Style Painting & Home Improvement, Inc. in 1984, helping the owner establish his business, and that he used that experience during his employment with Gemro Restoration Construction Company from 1984 to 1988. The applicant also states that he was unable to contact [REDACTED] of Gemro Restoration Construction Company for purposes of responding to the director's denial. The applicant resubmitted copies of the affidavits from the representatives of Gemro Restoration Construction Company and Style Painting & Home Improvement, Inc. He submitted as evidence a photocopy of the New York Driver License and New York City Consumer Affairs identification card of [REDACTED] is the representative of Style Painting & Home Improvement, Inc. Although the identification cards submitted confirm the affiant's identity, they are insufficient to substantiate the applicant's alleged employment throughout the requisite period.

The applicant also submitted an affidavit from [REDACTED] in which he stated that he has known the applicant from June of 1984 to May of 2006, and that the applicant used to work in the construction business. Here, the affidavit does not support the applicant's claim of residency in the United States since before January 1, 1982. It is further noted that the affiant fails to indicate the frequency in which he saw the applicant during the requisite period. There is no evidence in the record to demonstrate that the information provided by the affiant is based upon his firsthand knowledge of the applicant's circumstances and whereabouts throughout the requisite period. Because this affidavit is significantly lacking in detail it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

Here, the applicant has failed to overcome the director's denial. Although the applicant claims that he worked for the Style Painting and Home Improvement Company in 1984, there has been no independent documentary evidence submitted to support the applicant's employment claim. It is further noted that the applicant's claim of employment listed on his Form I-687 conflicts with his testimony and statements made by affiants. It is also noted that even if the applicant is able to establish his employment in the United States between 1984 and 1988, this evidence is insufficient to establish his continuous unlawful residence in the United States since before January 1, 1982. The applicant has failed to adequately address the discrepancies noted by the director pertaining to his employment by Gemro Restoration Construction Company. The affidavit submitted by the applicant on appeal lacks sufficient detail and does not support the applicant's claim of being present in the United States throughout the requisite period.

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 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.