



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

41

[REDACTED]

FILE: [REDACTED]
MSC-06-098-17126

Office: HARTFORD

Date: **AUG 18 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.

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, Hartford. The decision is now before the Administrative Appeals Office 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 she 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 her 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 she gave credible and detailed testimony. The applicant states that the director did not give adequate weight to her testimony. The applicant states that the denial notice does not specify the grounds on which her application was denied. The applicant notes that she crossed the Mexican border, but does not remember the exact place of entry.

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 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 on January 6, 2006. At part #30 of the Form I-687 application where applicants are asked to list all residences in the United States since first entry, the applicant showed her first address in the United States to be in Bridgeport, Connecticut from 1981 until 1999. At part #33, she showed that she was self-employed in the United States from June 1981 until April 1998. Part #33 of the application requests the applicant to list her occupation and location of employment. However, the applicant failed to provide such information. This lack of detail draws into question the overall credibility of the applicant’s claim of continuous residence in the United States during the requisite period.

The applicant submitted the following documentation:

- A notarized letter from [REDACTED], dated November 20, 2005, which provides, “I have known [REDACTED] since 1986. We met at the home of a mutual friend. [REDACTED] has

always been extremely sincere and honest during the many years of our relationship. Her character is excellent and she is highly moral. She is deeply religious and very kind. I value her as a friend and look up to her as a fine example of a very special human being.” This letter does not specify the location of Ms. [REDACTED]’s first meeting with the applicant. There is no indication that they first became acquainted in the United States. In addition, the letter fails to provide any information on their relationship in the United States during the requisite period. Relevant details would include the frequency and type of contact they maintained during this period. Given these deficiencies, this letter is without any probative value as evidence of the applicant’s residence in the United States from 1986 until the end of the requisite period.

- An affidavit from [REDACTED], dated November 25, 2005, which provides, “I was very fortunate to meet [the applicant] at a gathering many years ago and we have been friends since then. I have found her to be completely honest and trustworthy at all times, and [sic] always lives with high moral standards. In my opinion, she is a fine example of a sincere, honest, energetic young woman” This letter does not indicate the date that Ms. [REDACTED] first met the applicant. It only states that they met “many years ago.” The letter does not convey [REDACTED] direct personal knowledge of the applicant’s residence in the United States during the requisite period. Therefore, this letter is without any probative value as evidence of the applicant’s continuous residence in the United States during the requisite period.
- A notarized letter from [REDACTED] dated December 5, 2005, which provides, “I have know [sic] [REDACTED] since 1981. [REDACTED] has always been a honest and decent human being. She is very religious with a high moral value. I consider her a very special friend” This letter fails to specify the location of [REDACTED]’s first meeting with the applicant. There is no indication that they first became acquainted in the United States. Moreover, this letter fails to provide any details on their friendship in the United States during the requisite period. Given these deficiencies, this letter is without any probative value as evidence of the applicant’s continuous residence in the United States during the requisite period.

On February 15, 2007, the director issued a notice to deny the application. In denying the application, the director determined that the applicant’s evidence and testimony fails to substantiate her claim of being in the United States in an unlawful status prior to January 1, 1982. The director further determined that the applicant failed to establish her continuous residence in the United States in an unlawful status during the requisite period.

On appeal, the applicant asserts that she gave credible and detailed testimony. The applicant states that the director did not give adequate weight to her testimony. The applicant states that the denial notice does not specify the grounds on which her application was denied. The applicant notes that she crossed the Mexican boarder, but does not remember the exact place of entry.

The applicant asserts that she gave credible and detailed testimony during her interview for temporary resident status. According to 8 C.F.R. § 245a.2(d)(6), to meet her burden of proof, an applicant must provide evidence of eligibility apart from her own testimony. The applicant has been given the opportunity to satisfy her burden of proof with a broad range of evidence. *See* 8 C.F.R. § 245a.2(d)(3). The applicant submitted two notarized letters and an affidavit to satisfy her burden of proof. However, none of these letters indicate that the authors first became acquainted with the applicant in the United States during the requisite period. On appeal, the applicant failed to furnish any additional evidence. The applicant's failure to provide any other evidence to establish her continuous residence in the United States during the requisite period renders a finding that she has failed to satisfy her burden of proof, as delineated in 8 C.F.R. § 245a.2(d)(5). The applicant has not submitted sufficient evidence to establish that her claim is "probably true" pursuant to *Matter of E-M-*, *supra*.

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of her 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 lack of credible supporting documentation, it is concluded that she has failed to establish by a preponderance of the evidence that she has continuously resided in an unlawful status in the United States for the requisite period 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.