

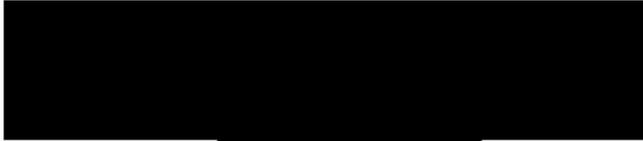
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U.S. Citizenship
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FILE: [REDACTED]
MSC-05-203-11877

Office: MIAMI

Date: **AUG 21 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:



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 if your case was 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, Miami. 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 entered the United States prior to January 1, 1982, and 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.

The applicant is represented by counsel on appeal. Counsel asserts that the applicant is the son of [REDACTED]. Counsel maintains that [REDACTED] “was able to file her original written claim for legalization” and that she may now “file for her son as a subclass member.”¹

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

¹ The AAO notes that the record before us does not reveal whether the applicant’s mother was actually granted temporary resident status, only that she submitted an application for such status.

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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to meet his burden of establishing continuous unlawful residence in the United States for the duration of 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 April 21, 2005. The applicant stated therein that he was born in Trinidad on September 11, 1977. 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 showed his first address in the United States to be in Margate, Florida, from May 1988 to September 1988. Similarly, at part #32 where applicants were asked to list all absences from the United States since entry, the applicant listed “arrival through Canada” as his “1st entry” in May 1988. The applicant listed no employment since his initial entry.

In addition, the record reflects that on May 18, 1997, the applicant was arrested by the Broward County Police Department and subsequently charged with aggravated battery without a firearm, a second degree felony, in violation of Florida Criminal Code §784.045. The applicant was

acquitted of this offense subsequent to trial by jury on January 27, 1999. Furthermore, on June 1, 2002, the applicant was arrested by the Broward County police and charged with possession of less than 20 grams of marijuana, in violation of Florida Criminal Code §893.13-6b, as well as possession of marijuana with intent to deliver, in violation of Florida Criminal Code §893.13-182(1c7). The applicant pleaded guilty to the lesser charge of possession of less than 20 grams of marijuana on July 25, 2002. This single misdemeanor conviction does not render the applicant ineligible pursuant to 8 C.F.R. § 245a.11(d)(1) and 8 C.F.R. § 245a.18(a).

The district director issued a Notice of Intent to Deny (NOID) on October 4, 2006. The director noted that the applicant admitted at his interview that he did not enter the United States until 1988. Therefore, the director concluded that the applicant was statutorily ineligible for temporary resident status, as he was not residing in the United States prior to January 1, 1982. The director granted the applicant thirty (30) days to submit additional evidence. The record reflects that the applicant submitted no further evidence in support of his claim. In the Notice of Decision, dated November 6, 2006, the director denied the instant application based on the reasons stated in the NOID. The applicant thereafter filed a timely Notice of Appeal (Form I-694) on December 6, 2006, and a brief in support of the appeal on January 10, 2007.

On appeal, counsel for the applicant does not offer any evidence to establish that the applicant was residing in the United States prior to January 1, 1982, or otherwise meets the requirements of the settlement agreements noted above. Counsel admits that the applicant entered the United States for the first time in 1988. However, counsel asserts that the applicant qualifies for temporary resident status “as a subclass member” in accordance with the definitional provisions of 8 C.F.R. §245a.10. This regulatory section defines “eligible aliens” for legalization as any alien (including a spouse or child *who was such* as of the date the alien alleges that he or she attempted to file or was discouraged from filing an application for legalization during the original application period) who filed a written claim for class membership prior to October 1, 2000. Thus, counsel concludes that as the applicant was the child of [REDACTED] at the time she is alleged to have attempted to file an application for temporary resident status; he also automatically qualifies for temporary resident status, irrespective of his initial entry into the United States in 1988.

The AAO finds this argument to be without merit. It is not disputed that the applicant was the child of [REDACTED] at the time counsel maintains she filed, or attempted to file, an application for legalization during the original filing period. It is also equally undisputed that the applicant was clearly not a resident of the United States prior to January 1, 1982. The district director did not deny the application for temporary resident status on account of class membership, but rather on account of the applicant’s failure to meet one of the threshold requirements listed in the settlement agreements. The applicant, as a subclass member of an allegedly qualifying alien, must also meet the residence and presence requirements noted above. The decision of the district director is correct on this point, and the applicant has presented no evidence to overcome the reason for the denial.

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.