

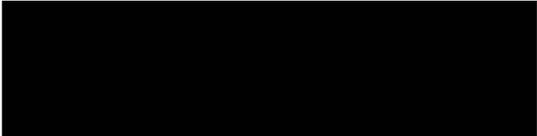
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U.S. Citizenship
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FILE: [REDACTED]
MSC-06-003-13080

Office: NEW YORK

Date: **AUG 29 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. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed or rejected, 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 issued a Notice of Intent to Deny on May 8, 2006 in which she stated that the applicant had failed to establish, by a preponderance of the evidence, continuous unlawful residence during the requisite period. The applicant submitted one additional affidavit in response to the Notice of Intent to Deny. The director denied the application on June 8, 2006, finding that the additional affidavit was insufficient to overcome the grounds stated in the Notice of Intent to Deny. The director also noted that the applicant had been absent from the United States from February 1989 until February 2001 and found that this extended absence rendered him ineligible for temporary resident status.

On appeal, the applicant has submitted a letter signed by [REDACTED] Principal of West Carrollton Middle School in West Carrollton, Ohio. The letter states that the applicant “was enrolled as a student of good standing in West Carrollton City Schools from 1982 – 1989.”

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).

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.

As noted above, the director concluded that the applicant was not eligible for temporary resident status under the CSS/Newman Settlement Agreements because the applicant stated that he had been absent from the United States from February 1989 until February 2001. This was an error by the director. The applicant’s absence from the United States from February 1989 until February 2001 occurred *after* the requisite period, and thus the absence is not relevant to a determination of eligibility for temporary resident status. This part of the director’s decision relating to the applicant’s absence after the requisite period will be withdrawn.

The sole issue in this proceeding, then, is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided in the United States for the duration of the requisite period. Here, the applicant has not met his burden of proof.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on October 3, 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 first period of residence the applicant listed began in January 1982. As noted by the director, the applicant also testified, during and interview with an immigration officer on May 8, 2006, that he first entered the United States in January of 1982. This casts doubt on the applicant’s claim to have resided in the United States throughout the requisite period (i.e., since *before* January 1, 1982).

The applicant submitted the following affidavits in support of his application:

- An affidavit from [REDACTED] dated December 3, 2005. The affiant lists the applicant’s residences since January 1982 and states that she became acquainted with the applicant through church affiliation. Although the dates and place of residence are consistent with information provided by the applicant on his I-687 application, the affidavit lacks details such as the how she dates her initial acquaintance with the applicant or the nature and

frequency of her contact with the applicant. Lacking such relevant detail, the affidavit can be afforded only minimal weight as evidence of the applicant's residence in the United States during the requisite period.

- An affidavit from [REDACTED] dated June 2, 2006. The affiant states that she has known the applicant since 1982. The affiant does not explain the basis of this knowledge, does not explain how or when she met the applicant, and does not explain the nature and frequency of her contact with the applicant. In light of these deficiencies this affidavit has little probative value and will be given minimal weight as evidence of the applicant's residence in the United States during the requisite period.

As noted above, on appeal the applicant has submitted a photocopy of a letter signed by [REDACTED] Principal of West Carrollton Middle School. The photocopied letter states that the applicant was a student at West Carrollton City Schools from 1982 to 1989. Based on a number of irregularities, the authenticity of the letter seems questionable. Specifically, the font in the body of the letter does not match the font of the signature block. Also, the letter is not dated. Further, although the letter is from West Carrollton Middle School, it addresses a time period outside the applicant's attendance at that school. That is, the letter states that the applicant was a student at West Carrollton City Schools from 1982-1989. As the applicant was only six years old in 1982, he would not have been attending middle school at that time. It seems unlikely that the principal of West Carrollton Middle School would provide a letter regarding the applicant's attendance at another school. More commonly, a letter from an individual school would confirm an individual's attendance only at that school. Because of these irregularities, this letter will be given minimal weight as evidence of the applicant's residence in the United States during the requisite period.

In summary, the applicant has not provided sufficient evidence in support of his claim of residence in the United States relating to the entire requisite period. In fact, there is no evidence in the record indicating that the applicant entered the United States prior to January 1, 1982. The affidavits submitted by the applicant and the letter purportedly from West Carrollton Middle School all reference the year 1982. Further, as noted above, the applicant testified before an immigration officer on May 8, 2006 that he first entered the United States in January of 1982.

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 applicant's reliance upon documents with little or no 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.