



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
MSC-05-323-11205

Office: NEW YORK

Date: FEB 04 2008

IN RE: Applicant: [REDACTED]

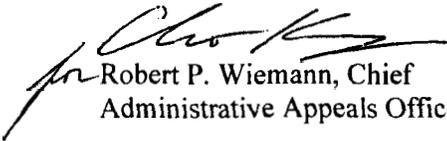
APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the
Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. 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.


for 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 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 the documents and oral testimony she provided were sufficient to establish her eligibility for temporary resident status; the director's decision is arbitrary; and the denial of the application is an abuse of the director's discretion.

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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that she resided in the United States for the duration of the requisite period. Here, the submitted evidence is not relevant, probative, and credible.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on August 19, 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 applicant listed the following addresses: [REDACTED], New York; [REDACTED], Gaithersburg, New Jersey; [REDACTED], Newark, New Jersey; [REDACTED], Bronx, New York; and [REDACTED], Bronx, New York.

The applicant failed to provide the dates during which she lived at each address, except to indicate that the [REDACTED] address was her current address, an omission that calls into question her claim to have resided in the United States throughout the requisite period. At part #31 where applicants were asked to list all affiliations or associations, clubs, organizations, churches, unions, businesses, et cetera, the applicant stated, “none.” At part #33 where applicants were asked to list all employment in the United States since entry, the applicant stated “none.”

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided multiple attestations. The applicant submitted a declaration from [REDACTED] church administrator of Christ Gospel Church, from December 1, 2005. The declarant stated that the applicant was a member of his church from September 1983 to December 2000. This declaration is inconsistent with the information provided on the applicant's Form I-687 application, where the applicant failed to list her membership in Christ Gospel Church when asked to list all affiliations or associations. In addition, the declaration does not conform to regulatory standards for attestations by churches, unions, or other organizations. Specifically, the declaration does not state the address where the applicant resided during the membership period, does not establish how the author knows the applicant, and does not establish the origin of the information being attested to. 8 C.F.R. § 245a.2(d)(3)(v).

The applicant provided another letter from Mr. [REDACTED] dated December 1, 2005. In this declaration, Mr. [REDACTED] stated that the applicant was employed by the church as a clerk from January 1985 to December 2000. This declaration is inconsistent with the information provided on the applicant's Form I-687 application, where the applicant failed to list the clerk position when asked to list all her employment in the United States. In addition, the declaration does not conform to regulatory standards for letters from employers. Specifically, the declaration does not include the applicant's address at the time of employment, whether or not the information was taken from official company records, where the records are located, and whether the service may have access to the records. 8 C.F.R. § 245a.2(d)(3)(i).

The applicant submitted a declaration from [REDACTED] which appears to indicate that the declarant fathered a child with the applicant. The child, [REDACTED], was born on October 13, 1988. The declarant stated, "[The applicant] at that time was an undocumented immigrant and was compelled to use somebody's [*sic*] else's paper." According to the declaration, the birth of the applicant's child fell outside the requisite period. Therefore, this declaration is not relevant to determining whether the applicant resided in the United States throughout the requisite period.

The applicant submitted a declaration from [REDACTED] in which the declarant stated that the applicant had rented a room from him at [REDACTED] in New York, during September 1982. This declaration is inconsistent with the information provided on the applicant's Form I-687, where the applicant failed to provide the [REDACTED] when asked to list all residences in the United States. This inconsistency calls into question Mr. [REDACTED] ability to confirm the applicant resided in the United States during the requisite period.

The applicant provided a declaration from [REDACTED] in which the declarant stated that he has known the applicant since May 1980. This declaration fails to confirm the applicant resided in the United States during the requisite period.

The applicant also provided birth documentation for her son indicating he was born in Maryland on October 13, 1988. Since the applicant's son's date of birth falls outside the requisite period,

his birth documentation is not relevant to determining whether the applicant resided in the United States during the requisite period.

In denying the application the director noted 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.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the requisite period. She has submitted attestations that are inconsistent with her I-687 application, do not conform to regulatory standards, do not relate to the requisite period, or fail to confirm the applicant resided in the United States during the requisite period. The declarations from Mr. [REDACTED] conflict with the applicant's Form I-687 application and do not conform to regulatory standards. The declaration from Mr. [REDACTED] does not relate to the requisite period. The declaration from Mr. [REDACTED] is inconsistent with the applicant's Form I-687 application. The declaration from [REDACTED] fails to confirm the applicant resided in the United States during the requisite period.

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 contradictions between the application and the documents submitted by the applicant, and given her reliance upon documents with minimal probative value, it is concluded that she 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.