

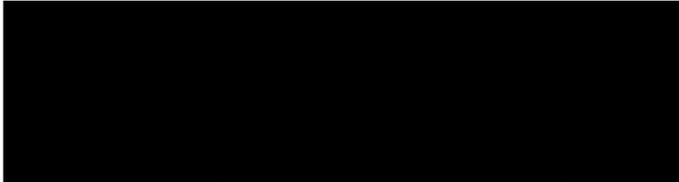


U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: NEW YORK Date: FEB 25 2008
MSC-06-082-13159

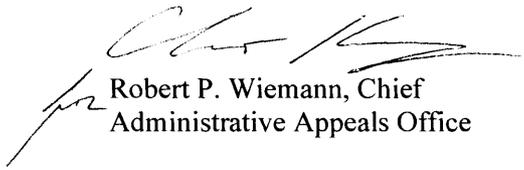
IN RE: Applicant: [REDACTED]

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:
[REDACTED]

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.


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 addresses the basis of the director's denial. The applicant asserts that he has resided in the United States since 1978.

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 December 21, 2005. The applicant signed this document under penalty of perjury, certifying that the information he provided is true and correct. 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 he resided in New York, New York from December 1978 until July 1985 and Brooklyn, New York from August 1985 until November 1991. At part #33, the applicant showed he was first employed as a welder helper with [REDACTED] in New York from January 1979 until November 1983. The applicant showed that he was then self-employed selling flowers in New York, New York from August 1980 until March 1984. The applicant showed that he was subsequently employed as a helper with [REDACTED] in New York, New York from April 1984 until May 1987 and as a cashier with [REDACTED] in Elmhurst, New York from August 1987 until November 1991. This information indicates that the applicant has resided in the United States during the requisite period; however the applicant has not provided probative, credible and reliable evidence to corroborate his claim.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted a variety of documentation. This proceeding will focus on the documentation in the applicant's record that relates to his residence in the United States during the requisite time period.

The applicant submitted the following documents to corroborate his residence in the United States since prior to January 1, 1982:

- A copy of the applicant's payroll identification card from Chase Manhattan Bank for his employment with Vanguard Diversified Inc., dated May 17, 1979;
- A copy of the applicant's Social Security Card;
- A copy of the applicant's receipt for his application for a social security number, dated January 4, 1979;
- A copy of the applicant's Form I-94, indicating that on December 20, 1978 he was admitted into the United States as a nonimmigrant visitor (B-1) until January 5, 1979;
- A copy of the applicant's bank statement from Citibank for the month of June 1979;
- Copies of two of the applicant's return receipts for mail addressed to the Immigration and Naturalization Service office in New York, New York, respectively dated January 1979 and March 1979; and
- A copy of the applicant's B-1 nonimmigrant visa, issued by the United States consulate in Lahore, Pakistan on November 29, 1978.

When viewed in totality, these documents are credible and probative evidence of the applicant's residence in the United States prior to January 1, 1982. Therefore, the remaining issue in this proceeding is whether the applicant has established his *continuous* residence in the United States throughout the requisite period. The "requisite period" is from prior to January 1, 1982 through the date the applicant attempted to file a Form I-687 application during the original legalization application period of May 5, 1987 to May 4, 1988.

The applicant submitted two employer letters from [REDACTED] and [REDACTED]. The regulation at 8 C.F.R. § 245a.2(d)(3)(i) provides, in pertinent part, that:

Letters from employers should be on employer letterhead stationery, if the employer has such stationery, and must include: (A) Alien's address at the time of employment; (B) Exact period of employment; (C) Periods of layoff; (D) Duties with the company; (E) Whether or not the information was taken from official company records; and (F) Where records are located and whether the Service may have access to the records. If the records are unavailable, an affidavit form-letter stating that the alien's employment records are unavailable and why such records are unavailable may be accepted in lieu of (3)(i)(E) and (3)(i)(F) of this paragraph. This affidavit form-letter shall be signed, attested to by the employer under penalty of perjury, and shall state the employer's willingness to come forward and give testimony if requested.

The letter from [REDACTED], store manager, [REDACTED], provides, “[b]e advised that [REDACTED] was our regular employee and was [w]orking with us in the capacity of Cashier since 08-1987 to 11-1991. I paid him \$3.75 in cash per hr.” This letter does not meet the criteria delineated in the regulations. Firstly, the letter fails to provide the applicant’s address during the time period of his employment. Secondly, the letter fails to explain whether the [REDACTED] has personal knowledge of the applicant’s employment. Lastly, the letter fails to explain whether the employment information provided was taken from official company records or the reason employment records are unavailable. Therefore, this letter can only be afforded minimal weight as probative evidence.

The letter from [REDACTED] manager, [REDACTED] provides, “[t]his is to verify that [REDACTED] Brooklyn, NY 11219. He was working with us as a Helper since 04-1984 to 05-1987. His salary was \$3.50 per hr and was working 40 hour per we[e]k.” This letter also does not meet the criteria delineated in the regulations. Firstly, the letter fails to provide information on the applicant’s duties, other than stating that he was a “helper.” Secondly, the letter fails to explain whether the [REDACTED] has personal knowledge of the applicant’s employment. Lastly, the letter fails to explain whether the employment information provided was taken from official company records or the reason employment records are unavailable. Therefore, this letter is also of minimal weight as probative evidence.

The applicant submitted an affidavit from [REDACTED], which provides, “[w]ith immense pleasure it is certified that the above named individual is known to me since 1981. First time we meet to each others [sic] in BOMBAY CINEMA which was located at on [sic] 57 Broadway Manhattan, that’s the way he become [sic] my family friend. Very often he visit [sic] me at my home . . . He was continuously physically present in the United States in an unlawful status expect for a innocent short absence. I have personal knowledge about this matter.” This affidavit is vague because it fails to specify [REDACTED]’s “personal knowledge” of the applicant’s continuous residence in the United States throughout the requisite period. This lack of detailed information renders it of minimal weight as probative evidence.

The applicant submitted an affidavit from [REDACTED], which provides, “I have personally known [REDACTED] since December 1981 . . . He used to sell flowers from door to door during those years and I was one of his regular customers since I’ve always been a collector.” This affidavit is deficient because it fails to explain the extent of [REDACTED]’s contact with the applicant during the requisite period. [REDACTED] asserts that during “those years” she purchased flowers from the applicant. This vague statement fails to specify how frequently [REDACTED] purchased flowers from the applicant and the years she made those purchases. Therefore, this affidavit can only be afforded minimal weight as probative evidence.

The applicant submitted copies of two photographs. There is no indication on these photographs of their date and location. There is also no explanation of the person who is featured in the photograph. Hence, these two photographs do not carry any weight as probative evidence.

Finally, the applicant's record contains a Form G-325A, Biographic Information, dated July 7, 2004. The Form G-325A is inconsistent with the applicant's claim of continuous residence in the United States during the requisite period. The applicant provided on this form his residence within the last five years as [REDACTED] Lahore, Pakistan from March 1960 until April 2004. This information is inconsistent with the applicant's testimony on his Form I-687 application, which states that he resided in New York, New York from December 1978 until July 1985 and Brooklyn, New York from August 1985 until November 1991. This inconsistency draws into question the overall credibility of the applicant's claimed residence in the United States during the requisite period.

In denying the application, the director noted that the applicant had not submitted his Form I-94 to document his entry into the United States in 1978. The director further noted that the applicant previously filed a Form G-325A, which states that he resided in Pakistan from 1960 until 2004. The director determined that the applicant had not provided sufficient evidence to establish his residence in the United States during the statutory period.

On appeal, the applicant resubmits a copy of his Form I-94, showing that on December 20, 1978 he was admitted as a nonimmigrant visitor (B-1) until January 5, 1979. The applicant asserts that he assumed he was a permanent resident of Pakistan, and as such he previously provided his permanent residence in Pakistan from 1960 until 2004. The applicant states, "[s]ince I was under the perception that I was still a permanent resident of Pakistan and was on a visit visa in the United States, I considered myself as a temporary U.S. resident and therefore wrote my permanent residence to be in Pakistan." The applicant maintains that he has provided documentation to prove that he has resided in the United States since 1978.

The applicant's attempt to explain the inconsistency between his Form G-325A and his Form I-687 is not reasonable. The applicant states, "[a]ccording to my best knowledge, I thought I was still permanently domiciled in Pakistan." However, the applicant neglects to explain the reason he provided, on his Form G-325A, Brooklyn, New York as his address from April 2004 until "present time." Therefore, the applicant has failed to overcome this basis for the director's denial of his application.

The sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6). The application of the "preponderance of the evidence" standard may require an examination of each piece of relevant evidence and a determination as to whether such evidence, either by itself or when viewed within the totality of the evidence, establishes that something to be proved is probably true. *Matter of E-M-*, 20 I&N Dec. at 80. The applicant has provided probative and credible documentation of his presence in the United States prior to January 1, 1982. However, the applicant has failed to provide sufficient evidence of his continuous residence in the United States during the *entire* requisite period. The documents claimed to corroborate the applicant's continuous residence in the United States during the requisite period contain several deficiencies that render them of minimal

probative value. Moreover, the applicant's file contains inconsistent information that indicates he resided in Pakistan during the requisite period. Consequently, the applicant has failed to satisfy his burden of proof in this proceeding.

In conclusion, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, as well as the inconsistency noted in the record, seriously detract from the credibility of his 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 inconsistency in the record and the lack of sufficient, credible supporting documentation, it is concluded that the applicant has failed to establish by a preponderance of the evidence that he 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.