



U.S. Citizenship  
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[REDACTED]

FILE:

MSC 06 031 19308

Office: NATIONAL BENEFITS CENTER

Date:

**FEB 26 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. 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 Director, National Benefits Center. 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, on October 31, 2005. 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 observed that the applicant had not provided any evidence in support of her application other than proof of her identity. The director also noted that the applicant had failed to submit evidence of her eligibility in response to a Notice of Intent to Deny (NOID) issued on November 28, 2005. The director denied the application as 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 submits two affidavits of witness and states that she could not find any other evidence to prove that she was in the United States "in 1981 and 1986."

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).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), "until the date of filing" shall mean 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 periods, 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 applicant 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 (CIS) on October 31, 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 showed her first address in the United States to be [REDACTED] in Pawtucket, Rhode Island from October 1981 until January 1982. She indicated that she subsequently resided at [REDACTED] in Dorchester, Rhode Island from November 1986 until June 1987. At #32, where applicants are asked to list all absences from the United States, the applicant indicated that she was in her home country of Cape Verde from January 1982 until November 1986, and from June 1987 until July 2001. The applicant did not state that she continuously resided in the United States for the duration of the requisite period. Therefore, based on the applicant's statements on Form I-687, she is ineligible for temporary resident status, because she cannot meet the continuous residence requirement set forth at Section 245A(a)(2) of the Act.

The applicant has the burden of proving by a preponderance of the evidence that she has resided in the United States for the requisite period. 8 C.F.R. § 245a.2(d)(5). To meet her burden of proof, an applicant must provide evidence of eligibility apart from her own testimony. 8 C.F.R. § 245a.2(d)(6). The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that an applicant may submit to establish proof of continuous residence in the United States during the requisite period. This list includes: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts or letters. An applicant may also submit any other relevant document pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The only evidence the applicant submitted in support of her application was a copy of the biographical page of her Republic of Cape Verde passport. While this evidence provides proof of the applicant's identity, it does not support her claim of continuous residence and physical presence in the United States during the requisite periods. Accordingly, the director issued a Notice of Intent to Deny (NOID) on November 28, 2005, advising the applicant that she failed to provide evidence of her entry to the United States prior to January 1, 1982 and evidence of her continuous residence for the duration of the requisite period.

In response to the NOID, the applicant submitted a letter dated December 28, 2005, in which she requested additional time to provide evidence of her entry to the United States.

The director denied the application on June 27, 2006. In denying the application, the director observed that there was no evidence in the record of the applicant's continuous residence in the United States during the requisite period. The director concluded that the evidence of record was therefore insufficient to establish the applicant's eligibility for temporary residence under Section 245A of the Act.

On appeal, the applicant submits two affidavits of witness and states that this is the only evidence she can provide that she was in the United States "in 1981 and 1986." She provides an affidavit from [REDACTED], a resident of Rhode Island, who states that she met the applicant in 1981 in Pawtucket, Rhode Island, through the applicant's uncle. She states that the applicant is a good friend and a nice person. While the affiant confirms the applicant's claim that she was in the United States in 1981, she does not indicate that she has personal knowledge that the applicant was residing in the United States for the duration of the requisite period. Because it is significantly lacking in relevant details, this affidavit has minimal probative value.

The applicant also submits an affidavit from [REDACTED], a resident of Brockton, Massachusetts, who states that he met the applicant for the first time at her parent's house in Cape Verde in 1980. He states that he met the applicant for the first time in the United States in 2001. [REDACTED] indicates that he has known the applicant and her parents for a long time and knows that she traveled with her parents to the United States in 1981 and 1986. Here, the affiant does not claim that he has any knowledge that the applicant was continuously residing in the United States for the duration of the requisite period. He confirms the applicant's testimony that she entered the United States in 1981 and 1986, but, as noted above, the applicant herself has not indicated that she resided in the United States for the majority of the requisite period. Furthermore, since the applicant did not meet the applicant in the United States until 2001, it does not appear that he has personal knowledge of the applicant's presence in the United States prior to that date.

Based on the foregoing discussion, the evidence submitted on appeal falls significantly short of establishing the applicant's eligibility for temporary residence under section 245A of the Act. Further, the applicant has again stated that she is attempting to prove that she was in the United States "in 1981 and 1986."

As is stated above, 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). The applicant has been given the opportunity to satisfy her burden of proof with a broad range of evidence pursuant to 8 C.F.R. § 245a.2(d)(3). However, this applicant has not provided any contemporaneous evidence of residence in the United States relating to requisite period, has in fact identified no residences in the United States between the dates of January 1982 and November 1986. She has submitted only two attestations from individuals, and neither claims to have any personal knowledge of the applicant's continuous residence in the United States for the duration of the requisite period.

In summary, the applicant has not claimed that she resided in the United States during the requisite period. Rather it appears that she was in the United States on two occasions during the requisite period, for a total of approximately 10 months. The testimony provided by her witnesses, at most, confirms that she was in the United States in 1981 and 1986. 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 own statements that she did not reside in the United States for the duration of the requisite period, and 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 from prior to January 1, 1982 through the date she attempted to file a Form I-687 application 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.