

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

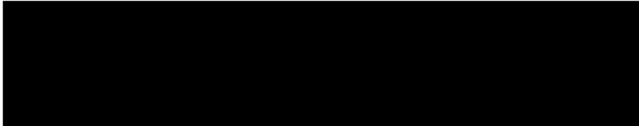
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

4



FILE:

MSC-05-181-31636

Office: NEW YORK

Date: FEB 29 2008

IN RE:

Applicant:



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.

A handwritten signature in black ink, appearing to read "D. Ly".

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 asserts that he has resided in the United States since 1981.

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 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 March 30, 2005. The applicant signed his application under penalty of perjury, certifying that the information he provided is true and correct. At part #30 of the application where applicants are asked to list all residences in the United States since first entry, the applicant reported his first address in the United States to be in Bronx, New York from January 1981 until October 1997. At part #32 of the application where applicants are asked to list their absences from the United States, the applicant indicated that he has had one absence from the United States since his first entry. The applicant reported that he traveled to Niger for a one month visit in October 1997. At part #33 of the application where applicants are asked to list their employment in the United States, the applicant reported that he is self employed without any other specific employment information. Although this application indicates that the applicant has continuously resided in this country since prior to January 1, 1982, he has failed to corroborate his claim with probative evidence.

In an attempt to establish continuous unlawful residence in the United States during the requisite period, the applicant submitted an affidavit from Assa Magassa. This affidavit provides, “I knew [redacted] in New York for many years, from April/1985 to present. . . [the applicant] is an excellent member of our African Community Association in the Bronx.” This affidavit

contains several apparent deficiencies. The affiant fails to provide any information on how he first met the applicant in 1985 and the extent of their contact thereafter. Furthermore, the affiant indicates that the applicant is a member of the African Community Association in the Bronx. However, the applicant has failed to list his membership in this association on his Form I-687 application. Therefore, this letter is of minimal weight as probative evidence of the applicant's residence in the United States during the requisite period.

Even if this affidavit carried significant weight as probative evidence of the applicant's residence in the United States since 1985, it would still not satisfy his burden of proof in the proceeding. The applicant has failed to provide any evidence to corroborate his claim of continuous residence in the United States since prior to January 1982. It should be noted that to meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. 8 C.F.R. § 245a.2(d)(6).

On February 22, 2006, the director issued a Notice of Intent to Deny (NOID) to the applicant. The director determined that the applicant had not established by a preponderance of the evidence that he has resided in the United States on or prior to January 1, 1982. The applicant was afforded thirty (30) days to provide additional evidence in response to the NOID.

The director partially based her decision on the following analysis:

Our records show that your birth date is June 18, 1973. Therefore, you were an eight year old child at the time of your alleged entry in the year 1981. You did not provide credible affidavits of any adult responsible for your care and financial support. It is expected for your application to include school records, given that you were a minor during the statutory period. In general, state and local health centers provides [sic] medical check-ups and vaccination to children. You did not provide any immunization or medical records as proof of your presence during the statutory period. There is insufficient evidence to carry the burden of proof. Your application is devoid of any evidence to support your claim . . .

The AAO notes that there are two errors in the director's analysis. Firstly, there is no requirement that the applicant provide school records, immunization records or medical records to corroborate his residence in the United States during the requisite period. Pursuant to 8 C.F.R. § 245a.2(d)(3)(L), an applicant for temporary resident status may submit any relevant document to meet his burden of proof. See *Matter of E-M-*, 20 I&N Dec. 77, 83. Secondly, the director determined that, "you have not established by a preponderance of the evidence that you actually took up residence in the United States *on* or prior to January 1, 1982" (emphasis added). Section 245A(a)(2) of the Act requires that the applicant establish that he entered the United States *before* January 1, 1982. Nevertheless, since the director was correct in her overall decision that applicant failed to submit documentation to establish his eligibility for temporary resident status, her actions must be considered to be harmless error.

In response to the NOID, the applicant submitted affidavits from [REDACTED] and [REDACTED]. The affidavits from [REDACTED] and [REDACTED] are nearly identical. Both affidavits provide, “[t]he applicant [REDACTED] is personally known to me since 1981. I make this affidavit in support of his claim of residence in the U.S. since before January 01, 1982.” The affiants further indicate that the applicant’s addresses during his residence in the United States as [REDACTED] Bronx, NY 10452 from October 1997 to Present and [REDACTED] Bronx, NY 10452 from January 1981 until October 1997. These affidavits are vague and lack significant detail. The affiants fail to detail their direct personal knowledge of the applicant’s residence in the United States during the requisite period. The applicant’s Form I-687 indicates that he was seven years old at the time of his entry into the United States. Had the affiants provided specific information, such as details on the applicant’s childhood in Bronx, New York, their affidavits could have carried significant weight as probative evidence. Without this specific information, these affidavits are of minimal weight as probative evidence of the applicant’s residence in the United States during the requisite period.

In denying the application, the director determined that the documents the applicant submitted in rebuttal to the NOID failed to overcome the grounds for denial. The director noted that the applicant failed to provide detailed and specific information to corroborate his claim. The director also noted that the applicant failed to provide credible affidavits of any adult response for his care and financial support. The director found that the applicant’s testimony was not credible. The director concluded that the applicant failed to meet his burden of proof in the proceeding and denied his application.

The AAO notes that there are two additional errors in the director’s analysis. Firstly, the director determined that the applicant failed to provide credible affidavits of any adult responsible for his care and financial support. While this type of an affidavit would have given greater weight to the applicant’s testimony, the applicant’s failure to submit such a document should not be fatal to his claim. As noted, an applicant for temporary resident status may submit any relevant document to meet his burden of proof. 8 C.F.R. § 245a.2(d)(3)(L). Secondly, the director determined, “there is no *primary* evidence in support of your claim of unlawful status prior to January 1, 1982 neither [sic] of your continuous residence between January 1, 1982 and *May 4, 1988*” (emphasis added). The regulations at 8 C.F.R. § 245a.2 do not differentiate between “primary” and “secondary” evidence. Furthermore, there is no requirement that the applicant establish continuous residence in the United States from between January 1, 1982 and May 4, 1988. Pursuant to section 245A(a)(2) of the Act, the applicant must establish his 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. 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*. Nevertheless, the director’s actions must be considered to be harmless error as the AAO conducts a de novo review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.2(d)(6).

On appeal, the applicant resubmitted the affidavits from [REDACTED] and [REDACTED]. The applicant asserts that he has been in the United States since 1981 and most of his documents have been lost.

An applicant for temporary resident status has the burden of proving by a preponderance of the evidence that he has resided in the United States for the requisite periods. *See* 8 C.F.R. § 245a.2(d)(5). 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. 77, 80.

The applicant has failed to provide reliable and probative evidence of his residence in the United States during the requisite period. The applicant has been given the opportunity to satisfy his burden of proof with a broad range of evidence. *See* 8 C.F.R. § 245a.2(d)(3). His application for temporary resident status consists of three supporting affidavits that, as noted, lack considerable detail on his residence in the United States during the requisite period. Hence, these documents, when viewed either individually or within the context of the totality of the evidence, are of minimal weight as probative corroborating evidence. On appeal the applicant resubmitted the documents he filed in rebuttal to the NOID. The applicant’s failure to provide any other evidence to establish his continuous residence in the United States during the requisite period renders a finding that he has failed to satisfy his burden of proof, as delineated in 8 C.F.R. § 245a.2(d)(5). The applicant has not submitted sufficient evidence to establish that his claim is “probably true” pursuant to *Matter of E-M-*, *supra*.

In this case, the absence of credible and probative documentation to corroborate the applicant’s claim of continuous residence for the entire requisite period seriously detracts 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 lack of 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.