



U.S. Citizenship
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FILE: [REDACTED]
MSC-05-050-10255

Office: NEW YORK Date: **JAN 02 2008**

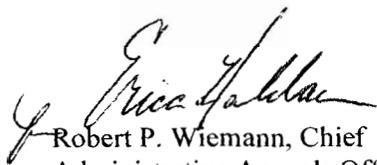
IN RE: Applicant: [REDACTED]

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:
[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 asserts that most of the evidence that would have supported his application and his claim of having resided in the United States for the duration of the requisite period was compiled in 1987, when he originally attempted to file for legalization. He states that he lost these documents as he thought there would be no need for them after he was told by Immigration and Naturalization Services, now known as Citizenship and Immigration Services (CIS) or the Service, that he was not eligible for legalization. He submits a new affidavit in support of his application.

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 (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 he 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 a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on November 19, 2004. 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 his addresses in the United States during the requisite period to be: [REDACTED] in Jackson Heights, New York from September 1981 until May 1986; and [REDACTED] in Jersey City, New Jersey from May 1986 until March 1988. At part #33, where the applicant was asked to list all of his employment in the United States since he first entered, he showed his employment in the United States during the requisite period to be: a self employed vendor in New York from December 1981 until March 1986; a gas station attendant in New Jersey from April 1986 until February 1987; and a dish washer at a pizza parlor in New Jersey from April 1987 until December 1988.

The record also contains a statement from the applicant that is dated September 30, 2004. In this statement, the applicant asserts he entered the United States in September 1981, traveled outside of the United States from April to May 1983 and then from January to February 1987. He goes on to say that he attempted to file for legalization in August 1987 but was told by an immigration officer that he was not eligible to apply for that benefit because of his absences.

The applicant has the burden of proving by a preponderance of the evidence that he has resided in the United States for the requisite period. 8 C.F.R. § 245a.2(d)(5). 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). 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).

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted the following evidence that is relevant to the requisite period:

- A statement from [REDACTED] that is dated July 27, 2004. Here, [REDACTED] states that he has known the applicant since 1987. He goes on to say that he used to live on the same street as the applicant in Queens, New York in 1987. Here, the affiant fails to indicate when and where he met the applicant. He does not submit proof of his identity or documents that establish that he himself resided in the United States during the requisite period. As the applicant has stated that he attempted to file for legalization in August 1987 and this affiant does not indicate when he first learned that the applicant resided in Queens, New York in 1987, it is not clear that this affiant can confirm the applicant's presence in the United States at any time during the requisite period. Because of this letter's significant lack of detail and because it establishes that the affiant did not meet the applicant until 1987, it carries no weight in establishing that the applicant resided in the United States for the duration of the requisite period.
- A statement from [REDACTED] dated July 26, 2004. Here, [REDACTED] states that he has known the applicant since 1981. He goes on to say that he lived in the same neighborhood as the applicant and saw the applicant regularly for two (2) years. Though [REDACTED] states that he has known the applicant since 1981, he does not state when or where he met the applicant or whether he met him in the United States. He fails to submit proof of his identity or documents that establish that he himself resided in the United States during the requisite period. Though he indicates that he saw the applicant regularly for two (2) years, he does not indicate whether this two (2) year period was during the requisite period. Because of this statement's significant lack of detail, it can

be accorded very minimal weight in establishing that the applicant resided in the United States during the requisite period.

- A letter from [REDACTED] dated October 5, 1987 that states that the applicant was seen in his clinic on September 27, 1987 with an acute illness. The regulation at 8 C.F.R. § 245a.2(d)(3)(iv) provides that credible proof of residence may be in the form of “medical records showing treatment of hospitalization of the applicant.” The regulation further provides that these records “must show the name of the medical facility or physician and the date(s) of the treatment.” This letter fails to provide medical records showing the medical treatment received by the applicant. As such, it can be accorded little weight in establishing that the applicant was present in the United States during the requisite period.

After receiving the above mentioned documents, the director noted the above and issued a Notice of Intent to Deny (NOID) on August 15, 2005. In her NOID, the director noted that the affidavits and the letter from [REDACTED] were not sufficient to prove by a preponderance of the evidence that the applicant resided in the United States continuously for the duration of the requisite period. The director granted the applicant thirty (30) days within which to submit additional evidence in support of his application. The director found that the applicant failed to submit additional evidence in support of his application in response to her NOID. Therefore, she determined that he did not overcome her reasons for denial as stated in her NOID. Therefore, she denied the application, issuing her first decision on January 26, 2006.

However, the record shows that the applicant did submit evidence to the director in response to her NOID. He resubmitted this evidence to the director with a Form I-694, Notice of Appeal of Decision in response to the director’s decision of January 26, 2006. Details of this evidence are as follows:

- A receipt for registration for a TESL program at the New School for Social Research that shows that the applicant registered for classes on January 27, 1982. Though this document indicates that the applicant registered for classes, the applicant has not submitted a transcript from this school that would establish that he attended classes there. Further, as this document pertains to a point in time after January 1, 1982, it does not establish that the applicant entered the United States before that date.
- A photocopy of the previously submitted statement from [REDACTED] submitted with a photocopy of a New York Driver’s License issued to him on April 11, 2003 and a photocopy of a page of his United States Passport issued February 10, 2000. Though Mr. [REDACTED] has now submitted proof of his identity, he has continued to fail to submit documents establishing that he resided in the United States during the requisite period, proof that there was a relationship between himself and the applicant or clarification as to when and where he met the applicant. Therefore, as this affidavit pertains only to an unspecified month in 1987 onward, this affidavit continues to carry very minimal weight in establishing that the applicant resided in the United States during part of 1987 and no

weight in establishing that the applicant resided in the United States from a date before January 1, 1982 until the time the [REDACTED] met him in 1987.

A photocopy of the previously submitted affidavit from [REDACTED] submitted with a photocopy of his New York State Driver's License issued to him on July 19, 2002. Though [REDACTED] has now submitted proof of his identity, he has continued to fail to submit documents establishing that he resided in the United States during the requisite period, proof that there was a relationship between himself and the applicant or clarification as to when and where he met the applicant. Therefore, this affidavit continues to carry very minimal weight in establishing that the applicant resided in the United States during the requisite period.

- An affidavit from [REDACTED] dated August 24, 2005. In this affidavit, [REDACTED] states that he has known the applicant since the summer of 1987. He states that he met the applicant when he was selling jewelry in the summer of 1987. He states that he met the applicant regularly at a café. Here, the affiant fails submit documents that establish that he himself resided in the United States during the requisite period. The applicant has stated that he attempted to file for legalization in August 1987 and this affiant does not indicate when in 1987 he met the applicant except to say that it was in the summer. Therefore, it is not clear that this applicant can confirm the applicant's presence in the United States at any time during the requisite period. Because of this affidavit establishes that the affiant did not meet the applicant until 1987, it carries no weight in establishing that the applicant resided in the United States for the duration of the requisite period.
- A statement from the applicant dated September 12, 2005. In this statement, the applicant asserts that he is enclosing additional evidence in support of his application.

Three (3) photographs of the applicant with dates written on the back of them that indicate they were taken in 1986 and 1987. Though these dates are written on the back of the photographs, there is no way to determine from the photographs, however, the date or place they were taken. They cannot therefore be accorded any weight as evidence in support of the applicant's past residence in the United States during the requisite period.

- A receipt on which it is indicated that the applicant paid three hundred (300) dollars rent in August 1982. Though this receipt indicates that the applicant paid rent for one (1) month in 1982, it alone is not sufficient to establish that the applicant resided continuously in the United States for the duration of the requisite period. Further, it carries no weight in establishing that the applicant entered the United States on a date prior to January 1, 1982.

The record shows that the applicant submitted his first Form I-694, Notice of Appeal of Decision to the Service on February 28, 2006 and that the district director reopened the case at that time. The record also shows that on July 21, 2006, the director completed a review of the above mentioned

evidence and issued a new decision that considered that evidence. In her new decision, the director noted the above and stated that she determined that the applicant continued to fail to prove, by a preponderance of the evidence that he resided continuously in the United States for the duration of the requisite period.

On appeal, the applicant submits a statement and an additional affidavit in support of his application. Details of that evidence are as follows:

- A statement from the applicant dated August 4, 2006. In this statement, the applicant asserts that much of the evidence that would have supported his claim was lost after he was front-desked by the Service in 1987. He states that the only new evidence he has that is available is the affidavit he is submitting with his appeal.
- An affidavit from [REDACTED] that is dated August 3, 2006. In this affidavit, [REDACTED] states that he first met the applicant in Morocco in the 1970's. He goes on to say that he knew that the applicant entered the United States in 1981 but that he himself did not arrive in the United States until November 1982. He states that from 1983 until 1986 he frequently saw the applicant. He does not state whether there were periods of time during which he did not see the applicant during that time. Here, though the affiant states that he met the applicant in the United States in 1982, he does not submit proof that he himself was in the United States during the requisite period. Further, as the affiant states he was not present in the United States prior to January 1, 1982, he could not have been personally aware of the events and circumstances of the applicant's residence in the United States prior to that date. Therefore this affidavit carries no weight in establishing that the applicant resided in the United States prior to January 1, 1982 and only very minimal weight in establishing that the applicant resided in the United States for part of the requisite period.

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. at 79-80. The applicant has been given the opportunity to satisfy his burden of proof with a broad range of evidence pursuant to 8 C.F.R. § 245a.2(d)(3). The applicant submitted photographs, one (1) rent receipt, a receipt for payment at the New School in New York in 1982, and attestations from four (4) people in support of his application. However, the dates the photographs were taken cannot be verified, the rent receipt submitted only pertains to one month of the requisite period, there is no evidence that the applicant attended the New School after registering for classes, and none of the affiants from whom the applicant submitted attestations have submitted evidence that they themselves 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 applicant's reliance upon documents with minimal 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.