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U.S. Citizenship
and Immigration
Services

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FILE:

MSC-05-059-10161

Office: NEW YORK

Date:

JAN 04 2008

IN RE:

Applicant:



APPLICATION:

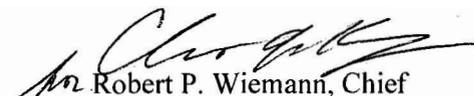
Application for Status as a Temporary Resident pursuant to Section 245A of the
Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:

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 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 reasserts his claim of eligibility to adjust to temporary resident status.

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. See CSS Settlement Agreement, paragraph 11 at page 6 and 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.

The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant’s whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The credibility of an affidavit may be assessed by taking into account such factors as whether the affiant provided a copy of a recognized identity card, such as a driver’s license; whether the affiant provided some proof that he or she was present in the United States during the requisite period; and whether the affiant provided a valid telephone number. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

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 submitted sufficient credible evidence to establish continuous residence in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application with the Service in the original legalization application period from May 5, 1987 to May 4, 1988. Here, the applicant has failed to submit sufficient probative and credible evidence to support his claim of residence in this country for the period in question.

The record shows that the applicant submitted a Form I-687 application and Supplement, which he signed under penalty of perjury, to Citizenship and Immigration Services (CIS) on November 28, 2004. At part #30 of the Form I-687 application where the applicant was asked to list all residences in the United States since first entry, the applicant listed 230 W 53rd Street (Bryant Hotel), New York, New York as his address from February of 1981 to November of 1999.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted the following attestations:

- An affidavit from [REDACTED] in which he stated that he has known the applicant to be in New York since before December 31, 1981. Here, the affiant fails to indicate how he met the applicant. He has failed to specify when he met the applicant and the frequency with which he saw the applicant during the requisite period. The affiant has not provided evidence that he himself was present in the United States during the requisite period. Though not required to do so, he has not included proof of his identity with this affidavit. Although Mr. [REDACTED] attested to the applicant's residence in this country since before December of 1981, he failed to provide any relevant and verifiable testimony, such as the applicant's address(es) of residence in this country during that period, to corroborate the applicant's claim of residence in the United States since prior to January 1, 1982. The affidavit invariably lacks detail that would lend credibility to the claimed relationship with the applicant. Because this affidavit is lacking in detail and probative value, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.
- An affidavit from [REDACTED] in which she stated that she has known the applicant since 1981, and that she is a witness to him being in the United States. Here, the affiant fails to where she met the applicant. She has failed to specify when she met the applicant, the circumstances leading to their acquaintance, and the frequency with which she saw the applicant during the requisite period. The affiant has not provided evidence that she herself was present in the United States during the requisite period. Though not required to do so, she has not included proof of her identity with this affidavit. Although Ms. [REDACTED] attested to the applicant's residence in this country since 1981, she failed to provide any relevant and verifiable testimony, such as the applicant's address(es) of residence in this country during that period, to corroborate the applicant's claim of residence in the United States since prior to January 1, 1982. The affidavit invariably lacks detail that would lend credibility to the claimed relationship with the applicant. Because this affidavit is lacking in detail and probative value, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.
- An affidavit from [REDACTED] in which she stated that she has known the applicant since 1981, and that the applicant has been living in the United States since that time. Here, the affiant fails to state where she met the applicant. She has failed to specify when she met the applicant, the circumstances leading to their acquaintance, and the frequency with which she saw the applicant during the requisite period. The affiant has not provided evidence that she herself was present in the United States during the requisite period. Though not required to do so, she has not included proof of her identity with this affidavit. Although Ms. [REDACTED] attested to the applicant's residence in this country since 1981, she failed to provide any relevant and verifiable testimony, such as the applicant's address(es) of residence in this country during that period, to corroborate the applicant's claim of residence in the United States since prior to January 1, 1982. The affidavit invariably lacks detail that would lend credibility to the claimed relationship with the applicant. Because this affidavit is lacking in detail and probative value, it can be accorded only minimal

weight in establishing that the applicant resided in the United States during the requisite period.

In denying the application the director determined that the affidavits submitted were not credible or amenable to verification, and were severely lacking in probative value. The director noted that the affiants failed to submit government-issued photographic identifications that positively identified who they were. The director also noted that numerous attempts had been made to contact the affiants, to no avail. The director further indicated that the applicant had failed to provide tangible evidence or credible documentation to attest to his claimed presence in the United States during the statutory time frame. The director concluded by noting that the applicant had not met his burden of proof, in that he failed to submit sufficient evidence to demonstrate his residence in the United States throughout the statutory period.*

On appeal, the applicant states that he has submitted affidavits from two long-time friends (Ms. [REDACTED] and Ms. [REDACTED]) who are citizens of the United States, and who have attested to knowing him for the time period consistent with that of the statutory period. The applicant provides telephone numbers that he states are that of Ms. [REDACTED] and Ms. [REDACTED] respectively. The applicant does not submit any further evidence.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the requisite period. The applicant did not submit any evidence on appeal. As is noted by the director, the applicant submitted affidavits that were not credible, were severely lacking in probative value, and were not accompanied by government-issued photographic identifications that positively identified the affiants. The applicant has failed to overcome the grounds for the director's denial in that he has not provided tangible evidence or credible documentation to attest to his claimed presence in the United States during the statutory time frame.

The absence of sufficiently detailed documentation to corroborate and support 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.