



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
MSC-05-131-12857

Office: NEW YORK

Date: JAN 28 2008

IN RE: Applicant: [REDACTED]

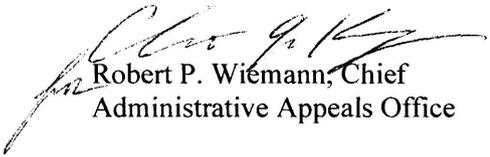
APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the
Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:



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 she 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 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. The director mentioned that an immigration officer attempted to contact an individual who had provided an affidavit declaration for the applicant, and the affiant refused to answer any questions.

On appeal, counsel for the applicant stated that the affiant was out of the United States at the time the immigration officer claimed to have contacted him, so the affiant could not have refused to answer questions as the officer indicated. The applicant also provided additional documentation in support of her claim that the affiant was outside of the United States when the officer attempted to contact him.

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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that she 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 supplement to Citizenship and Immigration Services (CIS) on February 8, 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 listed only [REDACTED] Bronx, New York from May 1999 to present. The fact that the applicant failed to list any periods and places of residence prior to May 1999 casts doubt on her claim to have resided in the United States throughout the requisite period.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant initially provided only an envelope addressed to her at the [REDACTED] address and containing a postage cancellation stamp date of July 30, 1986. As the director stated in the Notice of Intent to Deny (NOID) issued to the applicant on July 15, 2005, this evidence

is inconsistent with the information on the applicant's Form I-687, where the applicant indicated she began living at the [REDACTED] address in May 1999. This inconsistency calls into question both the authenticity of the cancellation stamp and the applicant's claim to have resided in the United States throughout the requisite period. The record indicates the applicant failed to respond to the concerns regarding this evidence that were raised by the director in the NOID.

The applicant also provided a declaration from [REDACTED], in which the declarant stated that he has known the applicant in the United States since 1981. The declarant stated that the applicant currently resides at [REDACTED] Bronx, New York, and that he has "known [the applicant] when she was living with her aunt . . . in 1981." The declarant also stated, "[d]uring this period [the applicant] was about 5 years old. [H]er aunt always left her in my house." This declaration does not clearly confirm the applicant resided in the United States during the requisite period. In addition, the declarant failed to provide details regarding the applicant's addresses during the requisite period, how he came to look after the applicant, and their frequency of contact during the requisite period. As a result, this declaration is found to lack sufficient detail to confirm that the applicant resided in the United States throughout the requisite period. Lastly, the declarant's misspelling of the applicant's current street as [REDACTED], instead of [REDACTED] casts doubt on the declarant's claimed knowledge of the applicant and her residence in the United States during the requisite period.

In denying the application the director noted 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 found that 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. The director mentioned that on August 4, 2006, an immigration officer attempted to contact [REDACTED] and [REDACTED] refused to answer any questions.

On appeal, counsel for the applicant stated that [REDACTED] was out of the United States at the time the immigration officer claimed to have contacted him, so the affiant could not have refused to answer questions as the officer indicated. The applicant provided an additional affidavit from [REDACTED] explaining that he had been outside of the United States from August 2, 2006 to August 14, 2006. The affiant stated, "I knew [the applicant] since he [*sic*] entered the United States in 1981." The affiant also expressed his willingness to testify that the applicant was in the United States in 1981. This affidavit fails to confirm the applicant resided in the United States during the requisite period. The applicant also provided a copy of a page of the affiant's passport including a stamp indicating he entered the United States approximately ten days after the officer attempted to contact him. The affiant provided no evidence that he departed the United States on August 2, 2006 other than his affidavit. The fact that the affiant referred to the applicant as a male further casts doubt on his claim to have knowledge of her residence in the United States during the requisite period.

In summary, the applicant has provided contemporaneous evidence of residence in the United States relating to the requisite period only in the form of an envelope that is inconsistent with the information on her Form I-687. The applicant has also provided two affidavits from a single affiant. The first affidavit fails to clearly confirm that the applicant resided in the United States during the requisite period and lacks sufficient detail. The second affidavit fails to confirm that the applicant 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 contradictions between the applicant's Form I-687 and her supporting documentation, and given 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 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.