

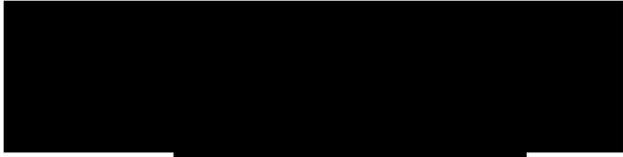
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
MSC 05 237 17300

Office: PHILADELPHIA

Date: JAN 29 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 District Director, Philadelphia, and 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. Accordingly, 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 submits a brief challenging the legal basis for the director's denial.

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 Immigration and Nationality Act (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).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and 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 alien 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.* 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 he resided in the United States during the requisite time period. In support of his claim, the applicant provided an affidavit dated May 19, 2005 from [REDACTED] who claimed that he has known the applicant since 1981. The affiant stated that he first met the applicant at a social gathering in Brooklyn, New York and continues to meet with the applicant "off and on." The affiant did not specify the social gathering where he first met the applicant and failed to indicate the frequency of his encounters with the applicant. The affiant also provided a general statement about the applicant's past employment, claiming that the applicant worked at a restaurant, a hardware store, and had "various other odd jobs in New York." However, the affiant did not provide the names of any of the applicant's employers to suggest that his claimed knowledge of this information was first-hand. In fact, the affidavit lacks any details that would lend credibility to an alleged 24-year relationship with the applicant and is not accompanied by any evidence that [REDACTED] himself resided in New York for the relevant period. As such, the statement can be afforded minimal weight as evidence of the applicant's residence in the United States for the requisite period.

After reviewing the application and supporting evidence, the director properly issued a notice of intent to deny (NOID), noting that the applicant provided a single affidavit as evidence to support his residency claim. The director stated that the documentation currently on record was insufficient for the purpose of establishing the applicant's eligibility for temporary resident status. In response, the applicant provided an undated statement asserting that any of his absences that took place after the statutory period were irrelevant to the issue of the applicant's eligibility for temporary resident status. With regard to the lack of further supporting evidence, the applicant stated that the single affidavit he submitted was all that was available. He stated that he would submit additional evidence if it became available.

In a decision dated June 5, 2006, the director noted that the applicant's statement was self-serving and failed to overcome the adverse findings cited in the NOID.

On appeal, the applicant vehemently disputes the director's denial in a brief that is fraught with flawed reasoning. First, the applicant addresses the director's reference to the NOID response as "self-serving,"

stating that the director's wording in the denial suggests that the applicant provided no evidence at all to support his claim. However, when reviewed with greater scrutiny, the director's statements merely suggest that the applicant has provided no evidence in response to the NOID to overcome the grounds stated for denial, which properly indicated that the applicant provided insufficient evidence to support his claim. Precedent case law has firmly established that going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). In the present matter, the director properly noted in the NOID that the applicant's entire claim rests on his own testimony and the deficient third-party attestation of one other individual. The applicant's personal statement in which he reasserted his original claim cannot be deemed as evidence to support that claim. In fact, the regulation at 8 C.F.R. § 245a.2(d)(6) clearly states, "To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony."

Second, the applicant's argument that the director's decision is "entirely deficient of any sympathetic consideration" erroneously suggests that the director has the discretion to grant an immigration benefit despite a lack of proper supporting evidence. While the director maintains a certain degree of discretion in his analysis of supporting evidence, he cannot approve an application, where supporting evidence is virtually non-existent or is deficient in other ways, based primarily on humanitarian grounds.

Third, the applicant imposes an undue burden on the director, suggesting that the director must establish good and sufficient cause by showing new evidence, fraud, or error in law in order to deny the application. This assertion has no merit and is unsupported either by statutory or regulatory provisions. Moreover, the primary burden is on the applicant to submit sufficient evidence in support of his claim. The director's finding that the applicant failed to meet this burden is a sufficient basis for denying the application in the present matter.

Lastly, the applicant asserts that he has "submitted several affidavits and employment letters from his former employers" to support his claim. This statement is also without merit, as the applicant's entire claim hinges on the supporting statements of a single affiant. While this affiant generally discusses the applicant's employment in the United States, his general statements do not amount to employment verification and, as discussed above, are lacking in sufficient detail to be assigned probative value.

In summary, 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 from prior to January 1, 1982 through the date he 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*, 20 I&N Dec. 77. 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.