

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

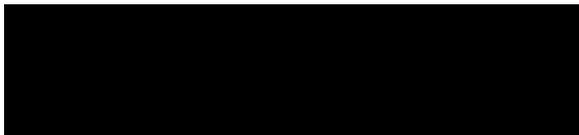
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

L1



FILE: [REDACTED]
MSC-06-028-10867

Office: NEW YORK

Date: JUL 01 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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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, counsel asserts the applicant's claim of eligibility for 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).

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) 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; 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 or her 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 October 28, 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 his address as [REDACTED], New York, New York, from October of 1981 to April of 1984; and [REDACTED], New York, New York, from April of 1984 to December of 1988. Similarly, at part #33, the applicant indicated that he was self-employed as a vendor in Bronx, New York from October of 1981 to October of 2005.

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

- A letter from a manager of the [REDACTED] in which he stated that the applicant lived at the hotel at [REDACTED] New York, New York, from October of 1981 to April of 1984.
- A letter from [REDACTED] of [REDACTED] in which he stated that the applicant resided at the hotel at [REDACTED] New York, New York, from April of 1984 to December of 1988.
- An affidavit from [REDACTED] in which she stated that she has known the applicant since 1981 when she met him on [REDACTED] and [REDACTED] where he was selling different types of merchandise. Here, the affiant fails to indicate the frequency with which she saw and communicated with the applicant throughout the requisite period. The affiant has failed to

provide any relevant and verifiable testimony, such as the applicant's places of residence in this country, to corroborate the applicant's claim of residence in the United States since prior to January 1, 1982. Because this affidavit is significantly lacking in detail, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

- A letter from [REDACTED] the manager of Dong Jin Trading Company, Inc. in which he stated that he has known the applicant since 1981 and that the applicant has purchased merchandise from his store. Here, the declarant fails to indicate the frequency with which he saw and communicated with the applicant throughout the requisite period. Because this affidavit is lacking in detail, 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 he stated that he has known the applicant since 1981 and that the applicant would eat at his restaurant located on Broadway. He also stated that they have become good friends over the years. The affiant fails to indicate the frequency with which he saw and communicated with the applicant throughout the requisite period. The affiant has failed to provide any relevant and verifiable testimony, such as the applicant's places of residence in this country, to corroborate the applicant's claim of residence in the United States since prior to January 1, 1982.
- An affidavit from [REDACTED] in which he stated that he has known the applicant since 1981 and that the applicant is a salesman who he brought merchandise from. The affiant lists the applicant's addresses from December of 1981 to July of 1990. Here the affiant fails to indicate the frequency with which he saw and communicated with the applicant throughout the requisite period. The affiant provides no details to demonstrate that his statements concerning the applicant's residency are based upon his firsthand knowledge of his whereabouts and circumstances during the requisite period.
- A letter dated June 29, 1990 from [REDACTED] in which he stated that the applicant has been a member of the Muslim Community since October of 1981 and that he attends Friday, Jumah and other Prayer Services at the Masjid Malcolm Shabazz. Here, the declaration does not conform to regulatory standards for attestations by churches. Specifically, the letter does not state the address where the applicant resided during the requisite period nor does it state the origins of the information attested to. 8 C.F.R. § 245a.2(d)(3)(v). Because this letter does not conform to regulatory standards, it can be accorded only minimum 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 met him at a dance at the Savoy Manor. She lists the applicant's addresses from October of 1981 to July of 1990. Here the affiant fails to indicate the frequency with which she saw and communicated with the applicant throughout the requisite period. The affiant provides no

details to demonstrate that her statements concerning the applicant's residency are based upon her firsthand knowledge of his whereabouts and circumstances during the requisite period.

- An affidavit from [REDACTED] in which he stated that he has known the applicant since October 30, 1981 and that the applicant sold merchandise in front of his workplace in Manhattan. The affiant lists "New York" as the applicant's residence from October of 1981 to October of 2001. Here the affiant fails to indicate the frequency with which he saw and communicated with the applicant throughout the requisite period. Because this affidavit is lacking in detail, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.
- A letter from [REDACTED] in which he stated that he has known the applicant since the winter of 1981. He further stated that he met the applicant while he resided at [REDACTED] New York, New York, and that his family took an interest in the applicant because of family acquaintances and because of his knowledge of religion. He also stated that over the years, the applicant has resided at [REDACTED], and in the Bronx. The declarant failed to specify the dates during which the applicant resided at the above noted addresses. There is no evidence in the record to demonstrate that the declarant's statements concerning the applicant's residency is based upon his firsthand knowledge of his whereabouts and circumstances during the requisite period. Because this affidavit is lacking in detail, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

The applicant also submitted the following documents:

A receipt dated 1987 bearing the applicant's name; and,

- A receipt from the Eagle Insurance Company dated December of 1988 and bearing the applicant's name as the insured.

The director noted in the Notice of Intent to Deny (NOID) that the attestations submitted by Hotel Bryant and the Mansfield Hotel appeared to be fraudulent, and that the applicant had failed to provide receipts or other corroborative evidence to substantiate his residency claim.

In denying the application the director noted that the applicant had failed to address the issues and the discrepancies that were raised in the NOID, and that the affidavits submitted were not credible. The director further noted that although the applicant provided evidence that demonstrated his presence in the United States since 1987, none of it was sufficient to establish his presence in the country prior to that time. The director also noted that the affiants failed to show proof of any direct knowledge of the events and circumstances surrounding the applicant's residency throughout the requisite period.

On appeal, counsel asserts that the documents submitted by the applicant are not fraudulent and that the evidence submitted is statutorily sufficient to establish the applicant's continuous residence in the United States throughout the requisite period. The applicant does not submit any evidence on appeal.

In the instant case, the applicant has failed to submit evidence that is credible, relevant, or probative sufficient to overcome the director's denial. The attestations submitted by the applicant are not credible, are lacking in detail, and have minimal probative value. The receipts submitted by the applicant demonstrate his presence in the United States since 1987 however they are insufficient to demonstrate his residency in the country prior to that time.

The absence of sufficiently detailed 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.