

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

LI

FILE:

MSC-04-335-10950

Office: NEW YORK Date:

JUL 11 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 director issued a Notice of Intent to Deny (NOID) on October 31, 2005. The NOID was sent to the applicant at the address listed on the I-687 application. In the NOID the director stated that the evidence submitted with the application was insufficient to establish eligibility for Temporary Resident Status pursuant to the terms of the CSS/Newman settlement agreements. Specifically, the applicant stated in his interview with a Citizenship and Immigration Services (CIS) officer that he first entered the United States on December 15, 1988. In addition, where the I-687 application asks for “*all of your residences in the United States since your first entry, beginning with your present address,*” the applicant only listed one address going back to 1988. The applicant did not respond to the NOID. The director denied the application on June 2, 2006 for the reasons stated in the NOID.

On appeal, the applicant states that he did not receive the NOID. However, the record shows that the NOID was sent to the correct address. Further, the applicant acknowledges having received the final Notice of Decision, which was sent to the same address. It is therefore presumed that the applicant received the NOID.

The applicant has not provided additional evidence on appeal.

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) 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).

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 applicant 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 for the duration of the requisite period. Here, the applicant has not met his burden of proof.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on August 30, 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 first period of residence the applicant listed began in 1988. At part #33 of the application where applicant were asked to list all employment in the United States since January 1, 1982, the first period of employment listed by the applicant began in 1989. In addition, the applicant testified under oath before an immigration officer that he first entered the United States in 1988. This casts doubt on the applicant's claim to have resided in the United States throughout the requisite period, and tends to show he entered the United States for the first time in 1988.

The record contains a letter from F [REDACTED], dated April 20, 2005, which states that the applicant has been undergoing treatment since 1982. The letter states that the applicant resides at [REDACTED] Bronx, NY 10451. This conflicts with the information provided by the applicant on his I-687 application where he lists his address as [REDACTED] Bronx, NY

from 2000 to the present. In addition, the letter lacks any detail regarding the nature and frequency of the applicant's "treatment" that would lend credibility to the letter. This letter therefore has minimal weight as evidence of the applicant's residence throughout the requisite period.

The record also contains a savings account statement bearing the applicant's name. The address listed for the applicant is [REDACTED] which, again, conflicts with the information provided by the applicant on his I-687 application. Further, the top portion of the statement appears to indicate that the statement period is June 10 to July 9, 1982 whereas the lower portion of the statement indicates that the period is June 10, 1988 to July 9, 1988. Given that the information on this document is internally inconsistent and inconsistent with other information provided by the applicant, this letter has minimal weight as evidence of the applicant's residence during the requisite period.

The record also contains a copy of a telephone bill from the New York Telephone company, dated June 22, 1982. The bill bears the applicants name and lists his address as [REDACTED] [REDACTED], which, again, conflicts with the information provided by the applicant on his I-687 application.

Finally, at part #32 of the I-687 application where applicants were asked to list all absences from the United States, the applicant listed an absence from 1983 to 1987. Continuous unlawful residence is broken if an absence from the United States is more than 45 days on any one trip, or 180 in the aggregate, during the requisite period unless the applicant can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the applicant was maintaining a residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.2(h).

The applicant's admitted absence from the United States from 1983 to 1987 is clearly a break in any period of continuous residence he may have established. As he has not provided any evidence that his return to the United States could not be accomplished due to "emergent reasons," he has failed to establish by a preponderance of the evidence that he has continuously resided in an unlawful status in the United States for the requisite period, as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E-M-*, *supra*.

The applicant failed to establish continuous unlawful residence in this country since prior to January 1, 1982. 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.