

PUBLIC COPY

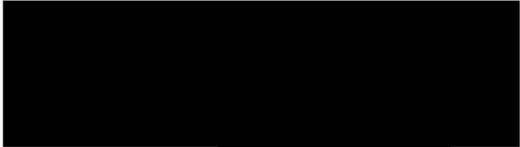
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

L,



FILE: [Redacted]
MSC-06-027-13939

Office: NEW YORK

Date: JUL 11 2007

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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed or rejected, 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 issued a Notice of Intent to Deny (NOID) on June 8, 2007. In the NOID, the director stated that the applicant failed to establish, by a preponderance of the evidence, continuous unlawful residence in the United States throughout the requisite period. The director denied the application on July 23, 2007. The director stated that the applicant had failed to submit additional evidence in response to the NOID and, therefore, the application was denied for the reasons stated in the NOID.

On appeal the applicant states that he never received the NOID and states that he provided sufficient evidence of his eligibility. The applicant has also submitted one additional witness statement in support of his application.

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.

As noted above, the applicant states that he never received a NOID. However, the record shows that a NOID was sent to the applicant at his address at [REDACTED], New Rochelle, NY 10801. The record shows that the NOID was sent by certified mail and bears a postmark dated June 12, 2007. The final Notice of Decision in this case was sent to the same address on July 23, 2007 and the applicant has not claimed that he did not receive the Notice of Decision. Because the NOID was sent to the applicant at the correct address by certified mail and there is proof of attempted delivery it is presumed that the NOID was properly served on the applicant.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on October 27, 2005. At part #30 of the I-687 application, where applicants were asked to list all residences in the United States, the first residence listed by the applicant was in New Rochelle, NY beginning in April 1981. However, the applicant testified before an immigration officer on October 10, 2006 that he resided in Los Angeles, CA for approximately four months after arriving in the United States. The applicant has not explained his failure to list a Los Angeles address on his I-687 application.

The applicant has also submitted the following documents in support of his application:

- A copy of a letter signed by [REDACTED] president of the International Martial Arts Federation. The letter is not dated or notarized. The letter states that the applicant is a student of [REDACTED] and that the applicant was training with [REDACTED] between the years of 1981 and 1982. [REDACTED] does not state where the training took place and does not claim have knowledge of the applicant’s residence during the requisite period. Because of these deficiencies, this letter has little probative value and will be given little weight as evidence of the applicant’s residence in the United States during the requisite period.
- Affidavit of [REDACTED] signed and notarized May 18, 2005. The affiant states that he met the applicant in New York in 1986 and that he and the applicant have since become friends. The affiant does not provide details regarding the frequency or nature of his contact with the applicant during the requisite period, nor does the affiant claim to have personal knowledge of the applicant’s residence during the requisite period. Given these deficiencies, the affidavit has little probative value and will be given minimal weight as evidence of the applicant’s residence in the United States during the requisite period.

- Affidavit of [REDACTED] signed and notarized on May 20, 2005. The affiant states that she met the applicant at a barbeque that she and her husband were hosting in 1987 and that the applicant has remained a close friend since that time. The affiant does not claim to have any knowledge of the applicant's residence during the requisite period and does not provide any information indicating that she has such knowledge. The affiant also fails to provide any details regarding the nature and frequency of her contact with the applicant. Because this affidavit is significantly lacking in relevant detail, it will be given only minimal weight as evidence of the applicant's residence in the United States during the requisite period.
- Affidavit of [REDACTED] signed and notarized on May 18, 2005. The affiant states that she has known the applicant since 1981 and that she met the applicant while he was performing handyman work at her apartment. As noted by the director, the applicant did not list employment as a handyman on his I-687 application. In addition, the affidavit is lacking in relevant detail such as how the affiant dates her initial acquaintance with the applicant or the nature and frequency of her contact with the applicant. Given these deficiencies, this affidavit has little probative value and will be given minimal weight as evidence of the applicant's residence in the United States during the requisite period.

In addition, the applicant submitted three certificates from the International Kung Fu Federation, Inc. dated May 1981, November 1982 and June 1987. None of these documents list the applicant's residence and it is not clear where or under what circumstances these certificates were issued to the applicant. Thus these documents have minimal weight as evidence of the applicant's residence during the requisite period. In addition, the director noted some discrepancies on these certificates. The applicant has not provided any explanation or documentation to resolve these discrepancies.

The evidence must be evaluated not by the quantity of evidence alone but by its quality. 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 his 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. 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.