

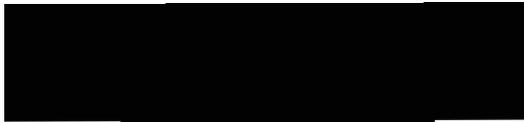


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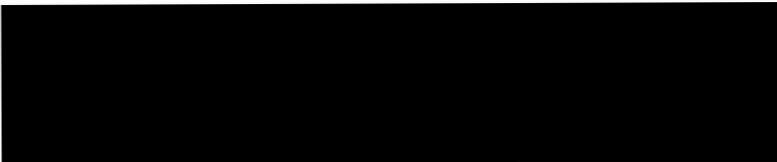
Office: NEW JERSEY

Date: JUL 14 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.

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, Newark. 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. Specifically, the director stated in her Notice of Intent to Deny (NOID) that the applicant failed to submit documentation that allowed him to meet his burden of proving that he resided continuously in the United States for the duration of the requisite period. The director granted the applicant 30 days within which to submit additional evidence in support of his application. In denying the application, the director stated that the applicant failed to submit additional evidence for consideration in response to her NOID. Therefore, the director found the applicant failed to overcome her reasons for denial and she denied the application.

On appeal, the applicant asserts that the director failed to accord due weight to evidence he previously submitted 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) 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 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 applicant 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 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 a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on June 16, 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 showed his address in the United States during the requisite period to be [REDACTED] in Bronx, New York from April 1981 until March 1991. At part #32 where the applicant was asked to list all of his absences from the United States since January 1, 1982, he indicated that he was absent once during the requisite period when he went to Canada in September of 1987. At part #33, where the applicant was asked to list all of his employment in the United States since he first entered, he showed that his first employment in the United States began in February 1988 when he began working at Gasteria in the Bronx, New York as a gas attendant. It is noted that the applicant was born in 1972 and therefore, he would have remained a minor for the duration of the requisite period.

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. 8 C.F.R. § 245a.2(d)(5). To meet his burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony. 8 C.F.R. § 245a.2(d)(6). The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that an applicant may submit to establish proof of continuous residence in the United States during the requisite period. This list includes: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts or letters. An applicant may also submit any other relevant document pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The applicant submitted the following documents that are relevant to his residence in the United States during the requisite period in support of his application:

- An affidavit from [REDACTED] that was notarized on an unspecified date. The affiant submits a photocopy of her birth certificate. The affiant states that she first met the applicant at the market in the Bronx in 1982 through her brother. This declarant does not state the frequency with which she saw the applicant during the requisite period or indicate whether there were periods of time during that period when she did not see the applicant during that time. Because this affidavit is significantly lacking in detail, it can only be accorded minimal weight as proof that the applicant resided in the United States for the duration of the requisite period.
- An affidavit from [REDACTED] that was notarized on an unspecified date. The affiant submits a photocopy of his birth certificate with his affidavit. It is noted that the word “VOID” appears on this birth certificate. The affiant states that he met the applicant at the Bronx Market in 1981 when the applicant was with his mother. He states that he has gone to see the Yankees play with the applicant. However, he did not indicate when he did so. The affiant fails to indicate the frequency with which he saw the applicant during the requisite period or to indicate whether there were periods of time during the requisite period when he did not see the applicant. He fails to state whether he knows if the applicant resided in the United States during the requisite period. Because of this, this affidavit carries minimal weight as evidence that the applicant resided in the United States during the requisite period.
- An affidavit from [REDACTED] that was notarized on November 26, 2005. The affiant submits a photocopy of his birth certificate as proof of his identity. The affiant states that he first met the applicant in July 1981 in the Bronx. He states that the applicant’s mother was friends with his own father. He asserts that the applicant resided on [REDACTED] in the Bronx and that the applicant traveled to Toronto with his mother to visit “their sister” in

1987. The affiant fails to indicate the frequency with which he saw the applicant during the requisite period or whether there were periods of time during that period when he did not see the applicant. Because of its significant lack of detail, this affidavit carries minimal weight as proof that the applicant resided continuously in the United States for the duration of the requisite period.

The director issued a NOID to the applicant on August 11, 2006. In this NOID, the director noted that the applicant initially did not submit any documents in support of his application that were relevant as proof of his residence in the United States during the requisite period. The director went on to say that at the time of the applicant's interview with a CIS officer pursuant to his Form I-687 application on February 22, 2006, he was issued a Form I-72 that requested him to submit additional documentation. The director went on to say that her office did receive additional evidence in support of the application. However, the director found that this evidence was not sufficient to meet the applicant's burden of proof. In saying this she noted that though the applicant claimed to have first entered the United States in 1981 when he was nine years old, he failed to provide school records showing attendance during the requisite period. She also noted that the applicant did not submit proof of having maintained continuous residence or continuous physical presence in the United States during the requisite period. The director granted the applicant 30 days within which to submit additional evidence in support of his application.

The director denied the application on December 18, 2006. In doing so, she noted that the applicant failed to submit additional evidence for consideration in support of his application in response to her NOID. Therefore, the director found the applicant did not overcome her reasons for denial as stated in that NOID and she denied his application.

On appeal, the applicant asserts that due weight was not accorded to the evidence the applicant submitted in support of his application. He did not submit additional evidence for consideration in support of his application.

The AAO has reviewed all of the evidence in the record. Though the applicant did submit three affidavits in support of his application, these documents did not allow the applicant to meet his burden of proof. The affiants failed to indicate that they personally knew whether the applicant was residing continuously in the United States for the duration of the requisite period. The affiants did not indicate the frequency with which they saw the applicant during that time or whether there were periods of time during the requisite period when they did not see the applicant. The affiants did not provide sufficient detail regarding their knowledge of the events and circumstances of the applicant's residence such that, when their affidavits are considered together, they allow the applicant to meet his burden of proof.

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the 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 lack of credible supporting documentation, it is concluded that 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 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.