



U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE:

[REDACTED]

Office: NEW YORK

Date: JUN 02 2008

MSC-04-360-10142

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.

*for Michael T. Kelly*  
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, on September 24, 2004 (together, the I-687 Application). 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 noting that the applicant did not address any of the issues identified in the director's notice of intent to deny. The director denied the application as 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 submitted a Form I-694 Notice of Appeal of Decision Under Section 210 or 245A and waived the right to submit a brief or statement. On the Form I-694, the applicant stated that due to the passage of time "it is unrealistic to demand corroborative documentation of unlawful residence" and that "the failure to provide evidence other than affidavits should not be the basis" for denying his application. The applicant submitted copies of two affidavits already in the record of proceeding. As of this date, the AAO has not received a brief or any additional evidence from the applicant. Therefore, the record is complete.

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 periods, 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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.2(d)(6).

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. *See* 8 C.F.R. § 245a.2(d)(6). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. Although not required, the credibility of an affidavit may be assessed by taking into account such factors as whether the affiant provided some proof that he or she was present in the United States during the requisite period. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

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 (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 entered before 1982 and resided in the United States for the requisite period.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on September 24, 2004. At part #30 of the Form

I-687 application where applicants are asked to list all residences in the United States since first entry, the applicant listed his first address in the United States as [REDACTED] Brooklyn, New York, from January 1982 to April 1990. At part #33, he listed his first and only employment in the United States as a self-employed vendor in New York, New York, from April 1982 to the present. At part #32, the applicant listed one absence from the United States during the relevant time period. According to the Form I-687, the applicant visited Canada on business from March 1988 to April 1988.

The applicant has provided three affidavits and a copy of his passport. The applicant's passport is evidence of the applicant's identity, but does not demonstrate that he entered before 1982 and resided in the United States for the requisite period. The following evidence relates to the requisite period:

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- A notarized form-letter "Affidavit of Witness" from [REDACTED] dated December 16, 2005. The declarant states that she lives in Queens, New York and that she first met the applicant December 1981 in New York. She states that the applicant was a street vendor and that she would buy items from him. The declarant also states that she befriended the applicant while buying things from him. Although the declarant states that she has known the applicant since 1981, the statement does not supply enough details to lend credibility to a 24-year relationship with the applicant. The declarant does not indicate under what circumstances she met the applicant in 1981, how she dates her initial acquaintance with the applicant, or how frequently she had contact with the applicant. Given these deficiencies, this statement has minimal probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.
- A sworn form-letter "Affidavit of Witness" from [REDACTED] dated May 10, 2006. The declarant states that he lives in Brooklyn, New York and that he has personal knowledge that the applicant resided in Brooklyn, New York from 1981 to 1990 and in Bronx, New York from 1990 to the present. He states that he met the applicant while the applicant worked as a street vendor and that he often purchased items from the applicant. Although the affiant states that the applicant lived in Brooklyn and Bronx, New York, he does not indicate how he has personal knowledge that the applicant lived in Brooklyn and Bronx. The affiant states that the longest period for which he has not seen the applicant is one (1) month and that he "often" purchased items from him. The affiant provides no further details as to the nature and frequency of his contact with the applicant and no information to corroborate his statements about the applicant's residences in Brooklyn and the Bronx. Given these deficiencies, this statement has minimal probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.

An "Affidavit of Character Reference" from [REDACTED] dated March 18, 2006. The declarant states that he has been acquainted with the applicant since 1981. The declarant also states that he and the applicant initially met at the "local Parks and Recreational Center where neighbors play basketball." The declarant and the applicant played in the "local avocational basketball games from 1981 through 1985" and "have remained in contact since that time." Although the declarant states that he has known the applicant since 1981, the statement does not supply enough details to lend credibility to a 25-year relationship with the applicant. The declarant does not indicate under what circumstances he met the applicant in 1981, how he dates his initial acquaintance with the applicant, or how frequently he had contact with the applicant. Given these deficiencies, this statement has minimal probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.

For the reasons noted above, the documents submitted in support of the applicant's claim have been found to lack credibility or to have minimal probative value as evidence of the applicant's residence and presence in the United States for the requisite period.

The remaining evidence in the record is comprised of the applicant's statements, in which he claims to have entered the United States in 1981 without inspection and to have resided for the duration of the requisite period in New York. As noted above, to meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony. In this case, his assertions regarding his entry are not supported by any credible evidence in the record.

The director issued a notice of intent to deny (NOID) on November 16, 2005 and on April 17, 2006. In the NOID dated April 17, 2006, the director stated that during the applicant's interview on March 20, 2006, the applicant did not know who [REDACTED]s, one of his affiants, was. The director denied the application for temporary residence on July 24, 2006. In denying the application, the director found that the applicant failed to establish that he entered the United States prior to January 1, 1982 or that he met the necessary residency or continuous physical presence requirements. In addition, the director stated that the applicant did not address any of the issues identified in the director's notice of intent to deny. Thus, the director determined that the applicant failed to meet his burden of proof by a preponderance of the evidence.

On appeal, the applicant submitted evidence already in the record of proceeding and waived the right to submit a brief or statement stated on the Form I-694. On appeal, the applicant resubmitted a copy of the [REDACTED] affidavit without addressing the director's concerns. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The applicant argues that due to the passage of time "it is

unrealistic to demand corroborative documentation of unlawful residence” and that “the failure to provide evidence other than affidavits should not be the basis” for denying his application. However, the affidavits provided by the applicant fail to meet the applicant’s burden of proof for the reasons discussed above and the applicant did not address the affidavits’ deficiencies as pointed out by the director.

In this case, the absence of sufficient 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 the applicant 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.