

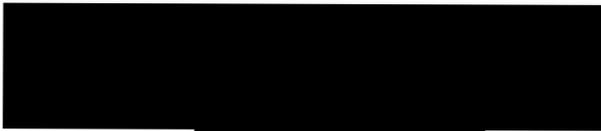
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U.S. Citizenship
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Services

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FILE: [REDACTED]
MSC 06 070 12328

Office: NATIONAL BENEFITS CENTER

Date: MAR 11 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: 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 Director, National Benefits Center, and 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. Accordingly, 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, the applicant challenges the director's findings and asserts that the evidence he has submitted is sufficient to establish his continuous residence in the United States during the statutory period.

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 Immigration and Nationality Act (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).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and presence in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), "until the date of filing" shall mean until the date the alien 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).

In the applicant's letter dated July 14, 2006, the applicant expresses his confusion and lack of understanding of the type of evidence required to substantiate his claim. Case law precedent has

established that 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.

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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided in the United States during the requisite time period. In the present matter, the applicant provided no evidence at the time of filing the Form I-687. Therefore, on January 11, 2006, the director issued a notice of intent to deny (NOID) informing the applicant that he has failed to substantiate his claimed unlawful residence with sufficient evidence.

In response to the NOID, the applicant provided an affidavit dated February 6, 2006 from [REDACTED] claiming to have first met the applicant in June of 1985. The affiant failed to describe the precise circumstances of that encounter, information that is particularly relevant in light of the applicant's residential history in the United States, which does not include Chicago, Illinois. The affiant also discussed the applicant's residence in Jacksonville, Florida, which is in direct conflict with the list of residences the applicant provided in No. 30 of his Form I-687. According to the information provided by the applicant in his application, he lived in New York from 1981 to 1999 and subsequently moved to Maryland. He did not claim to have ever lived either in Chicago, Illinois or in Jacksonville, Florida as suggested by the affiant. Moreover, even if the affiant's statements were entirely consistent with the applicant's claims, the affiant did not attest to the applicant's residence in the United States from prior to January 1, 1982 to 1985.

On appeal, the applicant asserts that Citizenship and Immigration Services (CIS) should have contacted the above affiant in order to get further information. However, as pointed out in this discussion, the affiant's statements are not merely lacking in sufficient detail; rather, they are inconsistent with the applicant's own statements. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). In the present matter, the applicant has not acknowledged that there are any inconsistencies between his statements and those provided by the affiant.

The applicant also challenges the director's adverse finding regarding the credibility of the supporting affidavit, emphasizing that the document was notarized by a credible notary. However, a notary's function is merely to verify the identity of the person signing the document, not to confirm the statements made by any particular affiant. Therefore, the fact that [REDACTED]'s letter is notarized does not serve to establish that the statements made by the affiant are true and accurate. In general, a notary would have no way of being able to attest to the veracity of claims made by every affiant seeking to notarize his or her document. For this reason, an affiant's statements must include specific verifiable information that demonstrates his or her knowledge of the events and circumstances of the applicant's life during his purported residence in the United States within the statutory time period. In the present matter, the affiant provided the place and date of his/her first encounter with the applicant and merely claimed to have remained friends with the applicant through the date of the affidavit. Even if there were no inconsistencies between the affiant's statements and those of the applicant, the affidavit lacks any details that would lend credibility to an alleged 21-year relationship with the applicant.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the statutory period, and has submitted a single attestation from an individual whose account of the applicant's residence history is inconsistent with the applicant's concerning that period. The absence of sufficiently detailed supporting 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 a single document with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E-M-*, 20 I&N Dec. 77. 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.