



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy
PUBLIC COPY

4

FILE: [REDACTED]
MSC-05-139-10048

Office: CLEVELAND

Date:

MAR 27 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. 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, Cleveland. 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. 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 requests that his application be reconsidered, and submits one affidavit.

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.

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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his or her 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 Supplement to Citizenship and Immigration Services (CIS) on February 16, 2005.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted the following attestations:

- An affidavit from [REDACTED] in which he stated that he has known the applicant since 1981 and that at that time the applicant lived at [REDACTED] New York, New York. He also stated that he and the applicant became friends and that they used to meet at the Malcolm Zabab Mosque and at his home in New York. Here, there is nothing in the record to indicate that the information provided by the affiant is based upon his first hand knowledge of the applicant's circumstances in the United States throughout the requisite period. There is no evidence that the affiant himself was present in the United States during the requisite period. He has failed to specify the frequency in which he saw the applicant. The affidavit lacks detail that would lend credibility to the claimed relationship with the applicant. Because this affidavit is lacking in detail and probative value, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

An undated affidavit from [REDACTED] in which she stated that she has known the applicant since 1986, and that he is a hardworking and trustworthy individual. Here, the affiant fails to indicate when in 1986 she initially met the applicant and under what

circumstances they encountered one another. In addition, she fails to indicate the frequency in which she saw the applicant during the requisite period. There is no evidence that the affiant herself was present in the United States during the requisite period. She has failed to provide any relevant and verifiable testimony, such as the applicant's places of residence in this country during that period, to corroborate the applicant's claim of residence in the United States since prior to January 1, 1982. The affidavit lacks detail that would lend credibility to the claimed relationship with the applicant. Because this affidavit is lacking in detail and probative value, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

- An undated affidavit from [REDACTED] in which she stated that she has known the applicant since 1982, and that he is a hardworking and generous person. Here, the affiant fails to indicate when in 1982 she initially met the applicant and under what circumstances they encountered one another. In addition, she fails to indicate the frequency in which she saw the applicant during the requisite period. There is no evidence that the affiant herself was present in the United States during the requisite period. She has failed to provide any relevant and verifiable testimony, such as the applicant's places of residence in this country during that period, to corroborate the applicant's claim of residence in the United States since prior to January 1, 1982. The affidavit lacks detail that would lend credibility to the claimed relationship with the applicant. Because this affidavit is lacking in detail and probative value, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

In denying the application the director noted that the affidavits submitted by the applicant are not credible and are insufficient to demonstrate the applicant's continuous unlawful residence in the United States since before January 1, 1982.

On appeal, the applicant asserts that affiant [REDACTED] has known him since 1981 and requests that his application be reconsidered on appeal. He also stated that he would attempt to obtain additional documents to evidence his presence in the United States since 1981. The applicant submits the following affidavit:

- An affidavit from [REDACTED] dated June 21, 2006, in which he states that he has known the applicant since 1981. That, he and the applicant would see each other at the Mosque and the applicant would visit him at his home from 1981 to 2000, when the applicant relocated to Ohio. Here, the statement made by the affiant is inconsistent with the applicant's information on his Form I-687 application, at part #30 where the applicant indicated that he resided in Cincinnati, Ohio from June of 1990 to February of 2005; and at part #33 where he indicated that he was self-employed in Cincinnati, Ohio from June of 1990 to February of 2005. This inconsistency calls into question the affiant's ability to confirm that the applicant resided in the United States during the requisite period. Because this affidavit contains statements that conflict with what the applicant showed on his Form I-687 application, doubt is cast on the assertions made. 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 application. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. *Id.* Any attempt to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Id.* at 591-92. It is further noted that the affiant's statement is not accompanied by evidence that he resided in the United States during the requisite period and it lacks sufficient details of his relationship with the applicant. Though not required to do so, he has not included proof of his identity with this affidavit. Because the statement conflicts with other evidence in the record and is lacking specificity, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the requisite period, and has submitted attestations with minimum probative value. The new affidavit from [REDACTED] is in conflict with statements made by the applicant on his Form I-687 application and it is lacking in detail.

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 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 statements that conflict with statements he made on his Form I-687 application, and his 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 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.