



U.S. Citizenship
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FILE: [REDACTED]
MSC 05 181 31659

Office: NEW YORK

Date: **MAY 01 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.

for 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, 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 she 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 her 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 disputes the director's denial and provides additional evidence in an effort to overcome the adverse finding.

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 until the date of filing the application. 8 C.F.R. § 245a.2(b)(1).

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), "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).

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 she resided in the United States during the requisite time period. In the present matter, the applicant has not met this burden. The following documentation has been furnished in support of the applicant's claim regarding her residence in the United States during the relevant time period:

1. An undated affidavit from [REDACTED] claiming that the applicant lived at her house, located [REDACTED], from May 1986 to August 1990. The affiant claimed that [REDACTED] the applicant's uncle, paid all of the applicant's household expenses.
2. An affidavit dated March 22, 2005 from [REDACTED] who stated that the applicant lived with him at [REDACTED] from November 1980 to April 1986 and that the rent receipts and household bills were in his name.
3. Eleven affidavits dated March 25, 2005 from affiants who provided the city and state of the applicant's alleged residence during the time they claimed to have known her. [REDACTED] and [REDACTED] all claimed to have known the applicant since prior to the commencement of the statutory period. However, none of these affiants provided any details that would lend credibility to their respective alleged 24-year relationships with the applicant. The remaining eight affiants provided similar deficient affidavits containing only the city and state of the applicant's purported residence as well as the date when each respective affiant allegedly met the applicant. None of the eight affiants claimed to have known the applicant prior to the commencement of the statutory period. All eleven of the affidavits are similarly lacking in information about the events and circumstances of the applicant's life during her alleged residence in the United States. As such, these affidavits will be afforded minimal weight as evidence corroborating the applicant's claim.

The district director issued a notice of intent to deny (NOID) on February 10, 2006, and an amended NOID on June 2, 2006, notifying the applicant that insufficient evidence had been submitted in support of her claim.

In response, the applicant submitted a letter dated June 17, 2006 in which she stated that she was too young at the time of her initial entry into the United States to recall the facts surrounding her entry. She also claimed that only her father had documents attesting to her residence in the United States during the relevant time period. The applicant also provided a photocopy of a partial envelope addressed to the applicant at [REDACTED] and containing a May 12, 1983 postage stamp.

On July 3, 2006, the district director denied the application citing the photocopied envelope and concluding that the applicant had failed to overcome the adverse findings cited in the previously issued notice of intent.

On appeal, the applicant asserts that due to her young age during the relevant time period, she is unable to produce any evidence of her residence in the United States during that time other than affidavits from U.S. citizens who knew her. The applicant requests reconsideration of her application on humanitarian grounds, stating that she is suffering from a life threatening illness. The applicant claims that she has the original letter that was contained in the photocopied envelope previously provided and states that she is willing to provide such document upon request. The applicant also provides another photocopied envelope containing only her name in the address portion. While this document contains a postage stamp of June 10, 1988, it remains unclear how this document could have reached the applicant, as it contains no destination address. More importantly, the postage stamp on this envelope addresses a time period that is outside the relevant statutory period. As such, this document has no probative value in the present proceeding.

At the outset, the AAO notes the applicant's statement regarding her medical condition. However, the applicant is required to demonstrate her eligibility for the benefit sought in accordance with the relevant statute and regulations, and she has not done so in this case.

In summary, the applicant has provided a single contemporaneous document suggesting the applicant's presence in the United States in 1983. Given the fact that the applicant was of school age at the time of her alleged entry into and subsequent residence in the United States, it is unclear why the applicant has been unable to provide any school or immunization documents to support her claim. While a number of non-contemporaneous documents have also been provided in the form of affidavits, as previously discussed, the majority of the affiants offered insufficient information about the events and circumstances of the applicant's life during her alleged residence in the United States within the statutory 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 documents with minimal probative value, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982

through the date she 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.

Additionally, an alien shall be regarded as having resided continuously in the United States if at the time of filing an application for temporary resident status, no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, through the date the application is filed, unless the alien can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the alien was maintaining residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.1(c).

While not specifically addressed by the director in the present matter, according to No. 32 of the applicant's Form I-687, the applicant departed the United States in March 1987 to visit her parents in Bangladesh and did not return to the United States until June 1987. By the applicant's own admission, this absence was for a prolonged period that exceeded the time limitation allowed by regulation.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis). Therefore, the AAO concludes that the applicant is ineligible for temporary resident status under section 245A of the Act on the additional basis of her absence as well.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.