

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

4

FILE:

MSC 05 150 10069

Office: NEW YORK

Date:

MAY 01 2008

IN RE:

Applicant:

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 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. Although the director denied the application, in part, based on the determination that the applicant failed to establish class membership, the fact that the application was adjudicated suggests that the applicant was treated as a class member, despite any adverse findings. As such, the AAO's decision will focus strictly on the applicant's eligibility for temporary resident status.

On appeal, the applicant submits an additional affidavit in support of his claim.

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 he resided in the United States during the requisite time period. Here, the applicant has failed to meet this burden. The record shows that in support of his Form I-687, the applicant submitted an affidavit dated January 10, 2005 from [REDACTED] who claimed that he met the applicant on July 10, 1981 at a New York flea market the applicant attended with his uncle. The affiant stated that the applicant was nine years old at the time and claimed that he was selling crafts along with his uncle. Although the affiant claimed that he and the applicant exchanged phone numbers and later began to socialize, he provided no details about the applicant's life in the United States to lend credibility to an alleged 24-year relationship with the applicant. The affiant also failed to state the frequency of his interactions with the applicant. As a result of these deficiencies, this affidavit can be afforded only minimal weight as evidence of the applicant's residence in the United States during the statutory period.

Accordingly, on February 7, 2006, the director issued a notice of intent to deny (NOID) informing the applicant that he failed to submit sufficient evidence to corroborate his claim. In response, the applicant provided a residential lease that appears to have been altered, with the appropriate dates and names of the applicant and his uncle typed into the lease using the identical typeface as the one used to complete the applicant's Form I-687. It is further noted that the applicant's lease shows that the lease term commenced on June 12, 1981. However, the applicant claimed in No. 30 of the Form I-687 that his residence at the premises commenced in May 1981. Regardless, the lease appears to have been altered, thereby leading the AAO to question the authenticity of the document and credibility of the applicant and his claim.

Additionally, the applicant provided a letter dated January 9, 2006 from a clinical coordinator at the Interfaith Medical Center, claiming that the applicant has been a patient at the center since July 15, 1981. However, the author of the letter did not provide any information as to the basis for the information claimed therein. Moreover, doubt cast on any aspect of the applicant'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. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). In the present matter, in light of the questionable authenticity of the residential lease as discussed above, the clinical coordinator's claim can be afforded only minimal weight as evidence of the applicant's residence in the United States during the statutory period.

On September 18, 2006, the director issued a final notice of denial, concluding that the applicant failed to submit sufficient documentation to corroborate his claimed unlawful residence during the time period in question. While the AAO concurs with the director's ultimate determination, it is noted that the director erroneously issued an adverse finding with regard to the applicant's failure to document his unlawful entry. Such an expectation is unreasonable and no adverse findings should stand from the applicant's inability to meet the unnecessary burden. Accordingly, the director's comment is hereby withdrawn. Nevertheless, in light of other adverse findings, a denial in the present was clearly warranted.

On appeal, the applicant submits one additional affidavit dated October 2, 2006 from [REDACTED] who claimed that he has known the applicant since June 1981 when the applicant was a young boy living with his uncle. The affiant provided no details about the applicant's life during his purported residence in the United States nor did he indicate how often he encountered the applicant during the statutory period. Accordingly, this document will be afforded minimal weight as evidence in support of the applicant's claim.

Lastly, the AAO notes that throughout the entire statutory period the applicant was of school age. No explanation has been provided as to why there are no school or immunization records documenting the applicant's residence in the United States.

In summary, the applicant has not provided any credible and probative evidence of residence in the United States relating to the 1981-88 period, and has submitted statements from only three people 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 use of an altered document 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 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.