



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

L1

FILE:

MSC-04-309-19493

Office: NEW YORK

Date: **MAY 13 2008**

IN RE:

Applicant:

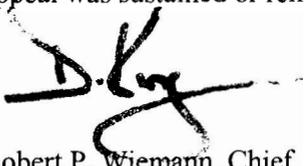
APPLICATION:

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:

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 Records 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, New York, 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. 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 asserts that he has submitted a lot of evidence and provides additional evidence.

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 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 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 evidence to meet his 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 August 5, 2004. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant showed his first address in the United States to be in [REDACTED] Boston, Massachusetts from December 1980 to May 1982, and in Jamaica, New York at [REDACTED] from June 1982 to November 1995. Similarly, at part #33, he showed his first employment in the United States to be in odd jobs (construction-helper) from December 1980 to April 1994.

The applicant submitted copies of his passport issued on July 13, 1998, and the following documentation with his application;

- A CIS Form I-94 Departure Record stating that the applicant was admitted into the United States on November 13, 1998, in B-2 nonimmigrant status.
- A Purchaser’s Memorandum dated January 2, 1981, from The First National Bank of Boston, Boston, Massachusetts to the order of [REDACTED], account number [REDACTED]
- A Cashier’s Check from The People’s Bank and Trust Company of St. Bernard’s, Chalmette, Louisiana, dated July 25, 1981, payable to E [REDACTED], account number [REDACTED]

- An affidavit made on July 6, 2004, by [REDACTED] of Floral Park, New York that he had known the applicant since 1986 when they met at a shopping center and since that time they have been good friends.
- An affidavit made on July 1, 2004, by [REDACTED] of Hillside, New York that he has known the applicant from India and met him in the United States in 1986. According to the affiant he sometimes meets the applicant for religious ceremonies and sometimes invited him to his home for dinner or lunch.

The affidavits are lacking in detail regarding the events and circumstances of the applicant's residence in the United States that would tend to lend credibility to their claim that they have direct, personal knowledge of the applicant's residence. The affiants failed to state that they have direct, personal knowledge of the applicant's continuous residence in the United States. They have not provided evidence of their own physical presence in the United States during the requisite period. They do not indicate in detail where or under what circumstances they met the applicant, the addresses at which the applicant lived during the requisite period, their frequency of contact with him during this period, or any other details of the events and circumstances of the applicant's residence. The affidavits have slight probative value in this matter.

On November 16, 2005, the director issued a Notice of Intent to Deny (NOID) to the applicant. The NOID provides that the applicant failed to submit documentation to establish his eligibility for Temporary Resident Status. The applicant was afforded thirty (30) days to provide additional evidence in response to the NOID. The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that may be provided to establish proof of continuous residence in the United States during the requisite period. This list includes: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts, or letters.

According to the NOID, the applicant stated that he entered the United States in December 1980 without inspection but had not submitted any evidence to support his claim. Further, the director stated that the applicant had not submitted sufficient evidence that he had been in the United States before January 1, 1982, and had continuously resided in the United States in an unlawful status since such date.

In response to the NOID, the applicant re-submitted the affidavits from [REDACTED] and [REDACTED] and the Purchaser's Memorandum and Cashier's Check above mentioned.

Further the applicant submitted a letter dated March 20, 2006, from [REDACTED] of West Hempstead Cards Inc., New York, that the applicant is a full time employee there since February 1, 2006.

The director denied the application for temporary residence on July 11, 2006. According to the director, the affidavit submitted did not address any of the issues regarding the applicant's eligibility for benefit requested and the copies of documents indicating transfers of funds submitted were not amenable to verification.

On appeal, the applicant submitted the following documents:

- A letter dated February 3, 1981, from [REDACTED], branch manager of the First National Bank of Boston, with a copy of a Purchaser's Memorandum, No. R [REDACTED] 2, dated November 5, 1980, that Brahama Nand, M/T Theodegmon, Piraeus, Greece, transmitted funds to the State Bank of India.
Also enclosed without an explanatory cover letter is another Purchaser's Memorandum, No. [REDACTED], dated January 21, 1981, that Brahama Nand, M/T Theodegmon, Piraeus, Greece, transmitted funds to the Ottoman Bank, Istanbul, Turkey on January 21, 1981.

The applicant stated that he entered the United States in December 1980 without inspection but had not submitted any evidence to support his claim. According to the evidence submitted, the applicant was in Piraeus, Greece from January 21, 1981, to February 3, 1981.

According to affidavits from [REDACTED] and [REDACTED] above mentioned, these individuals first met the applicant in the United States in July 1986.

According to the applicant's I-94 Departure Record the applicant was admitted into the United States on November 13, 1998, in B-2 non-immigration status.

In summary, the applicant has not provided sufficient evidence of residence in the United States relating to the requisite period or of entry to the United States before January 1, 1982 except for his own assertions, unsupported by independent objective evidence, and the statements and affidavits noted above. The statements and affidavits lack credibility and probative value for the reasons noted. Moreover, the record shows that the applicant has contradicted the assertion that he entered and resided in the United States in December 1980 when evidence was submitted that he resided outside of the United States from 1981.

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, as well as the inconsistencies and contradictions noted in the record, seriously detract 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 inconsistencies in the record and the lack of credible supporting documentation, it is concluded that he 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.