

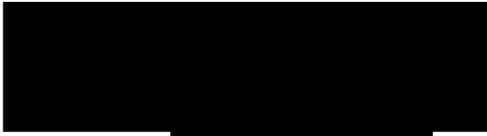
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U.S. Citizenship
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Services

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FILE: [Redacted]
MSC-06-032-10691

Office: NATIONAL BENEFITS CENTER Date: **MAY 21 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.

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

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, National Benefits Center. 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. Specifically, the director stated that though the applicant submitted an affidavit in support of his application, the affiant who submitted the affidavit did not attest to the applicant's presence in the United States during the requisite period. Because the applicant failed to provide evidence that he resided in the United States during 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 submits two statements in support of his application.

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) 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 a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to Citizenship and Immigration Services (CIS) on October 29, 2005. 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 address in the United States to be [REDACTED] in Pawtucket, Rhode Island where he presently resides. Here, the applicant does not show a start date to his residence at this address. At part #32 where the applicant was asked to list all of his absences from the United States, he indicated that he had no absences during the requisite period. Here, he showed his first and only absence from the United States to have been in February 1999 when he went to Canada to visit his uncle for two weeks. At part #33, where the applicant was asked to list all of his employment in the United States since he first entered, he showed that he was self-employed at a flea market and that this employment began in November 2004 and ended in September 2005. It is noted that this is the first and only employment shown on the applicant's Form I-687.

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. 8 C.F.R. § 245a.2(d)(5). To meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. 8 C.F.R. § 245a.2(d)(6). The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that an applicant may submit 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. An applicant may also submit any other relevant document pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

Here, the applicant failed to submit evidence that he resided in the United States for the requisite period when he initially submitted his Form I-687.

The director of the National Benefits Center issued a Notice of Intent to Deny (NOID) to the applicant on December 6, 2005. In his NOID, the director noted that the applicant failed to provide evidence that he entered the United States before January 1, 1982 and then resided in a continuous unlawful status except for brief absences from before 1982 until the date he or his parent or spouse were turned away by the Immigration and Naturalization Service (INS); that he was continuously physically present in the United States from November 6, 1986 and through the end of the requisite period; or that he was admissible as an immigrant. The director granted the applicant 30 days within which to submit additional evidence in support of his application.

The record shows that the applicant submitted an affidavit in response to the director's NOID as follows:

- An affidavit from [REDACTED] that was notarized on January 6, 2006. Here, the affiant states he knows the applicant has resided in Pawtucket since 2001. The affiant goes on to say that he has known the applicant for 25 years. However, here, the affiant does not indicate where he met the applicant or whether it was in the United States. He does not state that the applicant resided in the United States during the requisite period. Therefore, this affidavit is not relevant to this proceeding and it further carries no weight as proof that the applicant resided in the United States during the requisite period.

The director denied the application for temporary residence on July 12, 2006. In denying the application, the director noted that his office received additional evidence in support of the application. However, he noted that the evidence submitted did not allow the applicant to meet his burden for reasons noted above.

On appeal, the applicant submits two statements in support of his application. Details of these documents are as follows:

- A statement from the applicant that is dated August 7, 2006. In this statement, the applicant asserts that his application shows he entered the United States from Canada and first resided at [REDACTED] in Worcester, Massachusetts from June 6, 1981 until October 14, 1986. He goes on to say that he moved to New York on October 14, 1986 and resided there at an unnamed address until February 22, 1998. He states that he then moved back to Pawtucket, Rhode Island. It is noted here that this letter does not state that the applicant previously resided in Pawtucket, Rhode Island. It is further noted that the application submitted by this applicant shows his first and only address in the United States to be in Pawtucket. This inconsistency casts doubt on whether the applicant has accurately represented his residences in the United States to CIS.
- The applicant further submits a statement from [REDACTED] in support of his application that is not notarized but is dated August 6, 2006. In this statement, the declarant states that he has known the applicant since August 1986 when the applicant moved from Montreal, Canada to the United States. It is noted here that the applicant's own statement submitted with his appeal indicates that the applicant resided in Massachusetts beginning in 1981. That the applicant's statement and this statement, both submitted with the appeal, are not consistent with each other casts doubt on when the applicant entered the United States. Further, this statement indicates that the applicant did not enter the United States on a date prior to January 1, 1982 and then continuously reside in the United States for the duration of the requisite period.

In summary, the applicant has not provided any evidence of residence in the United States relating to the period from before January 1, 1982 until the end of the requisite period except for his own inconsistent assertions and the statement from [REDACTED] noted above. The applicant's assertions and statements and the letter he submitted from [REDACTED] are not consistent and therefore lack credibility for the reasons noted.

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.