

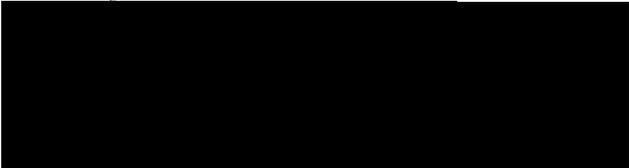
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
and Immigration
Services

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FILE: [Redacted]
MSC 06 101 18034

Office: NATIONAL BENEFITS CENTER

Date: **MAY 30 2008**

IN RE: Applicant: [Redacted]

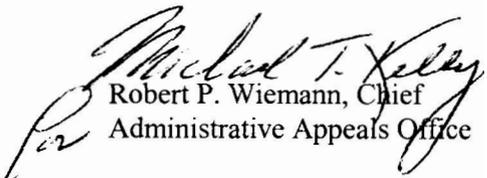
APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the National Benefits Center. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, 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.


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 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 asserts that she has established his unlawful residence for the requisite time period, that she is qualified under Section 245A of the Act and the CSS/NEWMAN settlement agreements, and that her application for temporary resident status should be granted.

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 245(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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that she resided in the United States for the duration of the requisite period. Here, the applicant submitted an affidavit from another person, a copy of her passport under which she gained entry to the United States, bank statements and a letter from an insurance company to support her I-687 application. For the reasons hereinafter discussed, that evidence does not establish the applicant’s unlawful presence in the United States during the requisite time period. The applicant has failed to meet her burden of proof.

Evidence Submitted

The applicant submitted a single sworn affidavit from [REDACTED] who states that he personally knows and has been acquainted with the applicant, and that he has personal knowledge that the applicant has resided in the United States from August of 1980 through September of 2005. The affiant states that the applicant lived with him for a period of 10 years, that she subsequently married his best friend, and that five (5) months is the longest period during which the affiant did not see the applicant during the requisite periods. The affiant submitted a copy of his United States passport verifying his citizenship. Although the applicant submitted a single affidavit in support of her application, the applicant has not provided any contemporaneous evidence of residence in the United States during the duration of the requisite period. Further, the affidavit of [REDACTED] lacks sufficient detail to credibly establish the extent of contact with the applicant stated by him in his affidavit. The applicant provided a copy of the passport under which she legally entered the United States as a B-2 visitor on August 30, 1980. No other documentation, however, was submitted establishing that she remained in the United States in an unlawful status for the requisite time period.

Such documentation could have included such records as bank statements, family and event photographs, school records, medical records, real estate/housing records, or other evidence of physical presence in the United States during the requisite period. The bank statements and insurance letter provided by the applicant establish that the applicant had a bank account in 1998 and 1999, and that she purchased an insurance policy in 2000. No records were presented to establish the applicant's unlawful presence in any other year from 1980 till the filing of the Form I-687 in 2006.

As stated previously, the evidence must be evaluated not by the quantity of evidence alone, but by its quality. Further, and although not required, the affidavit submitted did not include any supporting documentation of the affiant's presence in the United States during the requisite period. 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 his claim. Pursuant to 8 C.F.R. § 245a.12(e), 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 during the requisite period.

It should further be noted that although the applicant states on the Form I-687 class membership worksheet that she was turned away by the Immigration and Naturalization Service (INS) when she (or her parent or spouse) attempted to apply for legalization because the INS believed that she had traveled outside the United States after November 6, 1986 without advance parole, or had traveled outside the United States and returned after January 1, 1982 with a visitor's visa, student visa or some other type of visa or travel document, she does not indicate on the Form I-687 any absences from the country since her original entry in 1980.

Therefore, based on the above, the applicant has failed to establish by a preponderance of the evidence that she 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.