

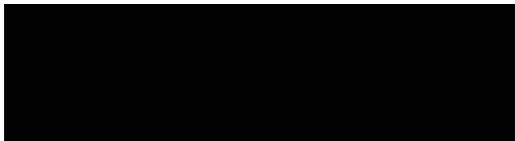
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U.S. Citizenship
and Immigration
Services

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FILE:

MSC-06-098-23064

Office: LOS ANGELES

Date:

OCT 03 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 "D. 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 director of the Los Angeles office. 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. The director stated that the applicant submitted only one affidavit in support of her application, from [REDACTED]

On appeal, the applicant asserts that she has proven her presence in the United States since 1981 and has submitted all the necessary documents. The applicant notes that she has submitted an employment confirmation letter from [REDACTED] in support of her application for temporary resident status. It is noted that the director failed to mention this letter in her decision.

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).

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 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 Supplement to Citizenship and Immigration Services (CIS) on January 6, 2006. 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 listed the following addresses during the requisite period: [REDACTED] Mendota, California from August 1981 to December 1987; and [REDACTED], Los Angeles, California from January 1988 to May 1998. At part #33 where applicants were asked to list all employment in the United States since entry, the applicant listed only the following positions: Agricultural worker from August 1981 to December 1987 for Iresa Bros. Inc.; and housekeeper for [REDACTED] from June 1986 to December 1988.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided two attestations. She submitted an affidavit from [REDACTED] which states that the applicant was employed by the Iresa Bros. Inc. farm labor contracting firm from August 1981 through December 1987 for a total of 100 estimated days for each year. Mr.

stated that he is unable to provide actual payroll records, since these documents were destroyed in a fire. He stated that he was able to recognize the applicant because he has yearly personal contacts with her. This affidavit does not conform to regulatory standards for letters from employers as stated in 8 C.F.R. § 245a.2(d)(3)(i). Specifically, the affidavit does not include the applicant's address at the time of employment and periods of layoff. The affidavit also fails to state that the applicant resided continuously in the United States during the requisite period. As a result of these deficiencies, this affidavit will be given no weight in establishing that the applicant resided in the United States continuously from August 1981 to December 1987.

The applicant also provided an affidavit from which states that the applicant worked cleaning the affiant's house from 1986 to 1988 in Los Angeles. This affidavit does not conform to regulatory standards for letters from employers as stated in 8 C.F.R. § 245a.2(d)(3)(i). Specifically, the affidavit does not include the applicant's address at the time of employment or whether there are any records of the applicant's employment. In addition, the affidavit contains no details regarding when the affiant met the applicant, how the applicant came to be working for the affiant, and how frequently they had contact during the requisite period. Lastly, although it may be implied, the affidavit fails to specifically state that the applicant continuously resided in the United States from 1986 to 1988. Due to these deficiencies, this affidavit will be given nominal weight in establishing that the applicant resided in the United States continuously from 1986 to 1988.

In denying the application, 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 stated that the applicant submitted only one affidavit in support of her application, from .

On appeal, the applicant asserts that she has proven her presence in the United States since 1981 and has submitted all the necessary documents. The applicant notes that she has submitted an employment confirmation letter from .

In summary, the applicant has provided two attestations in support of her application for temporary resident status. These documents fail to conform to regulatory standards and fail to state that the applicant resided in the United States continuously during the requisite 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 for the requisite period 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.