

Identifying documents to  
prevent identity theft and  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY

4



FILE:



MSC-05-179-13840

Office: WASHINGTON

Date:

OCT 14 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. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed or rejected, 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.

A handwritten signature in black ink, appearing to read "Robert P. 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, Washington. 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 denied the application on May 30, 2006. The director determined that the affidavits submitted by the applicant failed to establish his continuous residence in the United States.**

On appeal the applicant states that the affidavits that he submitted are sufficient to establish, by a preponderance of the evidence, that he resided in the United States throughout the requisite period.

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)(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 applicant 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.

It is noted that, in a portion of her decision, the director incorrectly stated the standard of proof. Specifically, the director stated that the affidavits submitted by the applicant were insufficient “because they cannot be verified to a point where there would not be any reasonable doubt as to your meeting the requisites necessary for you to qualify” for temporary resident status. As discussed above, the evidentiary standard in this case is “preponderance of the evidence,” rather than “beyond a reasonable doubt.” It is not clear that the director actually applied the incorrect evidentiary standard, as she also quoted the regulation at 8 C.F.R. § 245a.2(d)(5) in her decision. That regulation correctly states the “preponderance of the evidence” standard.

Even assuming that the director incorrectly applied a “beyond a reasonable doubt” standard, the error is harmless because the AAO conducts a *de novo* review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.2(d)(6). The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) (“On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.”); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO’s *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided in the United States for the duration of the requisite period. The AAO has reviewed all of the evidence submitted by the applicant under the *de novo* standard described above and has concluded that the applicant has not met his burden of proof.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on November 22, 2005. At part #30 of the I-687 application, where applicants were asked to list their residences in the United States since their first entry, the first period of residence listed by the applicant began in 1981. The first period of employment, listed by the applicant at part #33 of the Form I-687 application, also began in 1981. The applicant has stated on appeal that he first arrived in the United States in 1979. However the

applicant failed to provide a residence or employment in the United States for the period from 1979 until 1981 on his Form I-687 application.

The applicant submitted the following affidavits and written statements in support of his application:

- Two affidavits from [REDACTED]. One is dated June 3, 2005 and the other is dated August 2, 2005. The affiant states that she met the applicant on December 15, 1979 at a church in Washington, DC. The applicant did not list membership in any church in his Form I-687 application, and the applicant did not indicate that he was residing in the Washington, DC area in 1979. The first place of residence listed by the applicant on his Form I-687 application was in New York in 1981. Further, the affiant does not provide any details regarding the nature or frequency of her contact with the applicant during the requisite period. Given these deficiencies, these affidavits will be given only minimal weight as evidence of the applicant's residence in the United States during the requisite period.
- An affidavit from [REDACTED] dated August 1, 2005, and a letter from [REDACTED] dated November 23, 2004. Mr. [REDACTED] is the applicant's brother. In the affidavit and letter Mr. [REDACTED] states that he attended Georgetown University in Washington, DC in 1981 and, during that year, he twice visited the applicant in New York City. Aside from the two visits in 1981, Mr. [REDACTED] does not claim to have had any contact with the applicant during the requisite period, nor does he claim to have knowledge of the applicant's residence during the requisite period. Given this lack of probative detail, the affidavit and letter from [REDACTED] will be given only minimal weight as evidence of the applicant's residence in the United States during the requisite period.
- A letter from [REDACTED] of the United Brethren for Christ, Inc. The declarant states "to the best of my knowledge and information's [sic] on hand [REDACTED] first entered the United States in 1979." The declarant also states that the applicant began training as a Missionary Trainee with the United Brethren for Christ in 1994. It is not clear that the declarant had contact with the applicant prior to 1994. Thus, it is not clear that the declarant has personal knowledge of the applicant's residence during the requisite period. Therefore, this letter will be given only minimal weight as evidence of the applicant's residence during the requisite period.
- An affidavit from [REDACTED] dated November 19, 2004. The affiant states that he has personal knowledge that the applicant resided in New York, New York. The affiant does not list the dates of the applicant's residence in New York. The affiant further states that he met the applicant at a Christmas party, but does not provide the date of the party. It is not clear from this affidavit that the affiant had any contact with the applicant during the requisite period. Therefore, this affidavit will not be given any weight as evidence of the applicant's residence in the United States during the requisite period.
- A letter from [REDACTED] dated October 6, 2005. The declarant states that she met the applicant at a party in New York City at a friend's house in December of 1981. Other than

meeting at a party in 1981, the declarant does not provide any details regarding the nature and frequency of her contact with the applicant during the requisite period. Lacking such probative details, this letter will be given only minimal weight as evidence of the applicant's residence in the United States during the requisite period.

The applicant has also submitted documents which fall outside the requisite period. These include a copy of a Bachelor of Science degree awarded to the applicant in 1996, a report from the Social Security Administration which lists earnings by the applicant beginning in 1989, and a letter from Central Fairfax Services, Inc. which states that the applicant was hired by them in 1997. As these documents are outside the requisite period they have no probative value with respect to the applicant's residence in the United States during the requisite period.

In summary, the applicant has not established his eligibility for temporary resident status. Given the applicant's 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 for the requisite period. 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.