

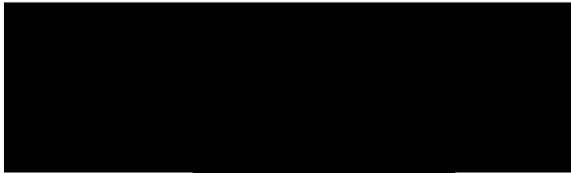
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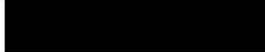


U.S. Citizenship
and Immigration
Services

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FILE: 
MSC-05-166-10165

Office: NEWARK Date: **SEP 02 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 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.

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, Newark. The decision is now before the Administrative Appeals Office 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 that he was therefore not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, counsel asserts that the applicant has submitted sufficient evidence dated prior to 1986 to establish his continuous residence in the United States during the requisite period, and that such evidence needs to be carefully reviewed.

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. *See* CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

An alien shall be regarded as having resided continuously in the United States if at the time of filing an application for temporary resident status, no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, through the date the application is filed, unless the alien can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the alien was maintaining residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.2(h)(1).

If the applicant's absence exceeded the 45-day period allowed for a single absence, it must be determined if the untimely return of the applicant to the United States was due to an "emergent reason." Although this term is not defined in the regulations, *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), holds that emergent means "coming unexpectedly into being."

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 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 of proceeding shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS), on March 15, 2005.

The applicant submitted photocopies of two postmarked Par Avion envelopes addressed to the applicant at [REDACTED] New York, New York, and dated September 23, 1981 and November 23, 1981 respectively. The photocopied letters appear to have been altered as the original postmarked dates seem to have been covered-over and the dates indicated above have been inserted in their place. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). It is further noted that the address which appears on the envelopes is inconsistent with the address that the applicant indicated on his I-687 application at part # 30 where he stated that he resided at [REDACTED] in New York from 1981 to 1984. There has been no explanation given for this inconsistency. To the extent that the authenticity of the postmarked dates is questionable, this evidence cannot be used to substantiate the applicant's claim of continuous residence.

The applicant submitted the following attestations:

- An affidavit dated March 21, 2006 from [REDACTED] in which he stated that he has known the applicant from the Ivory Coast, and has known him in the United States since 1981. He also stated that the applicant resided with him at [REDACTED] in New York in 1981 when he arrived in the country, and that the applicant has made some brief trips to the Ivory Coast. This statement is inconsistent with the statement made by the applicant on his I-687 application at part #30 where he indicated that he resided at [REDACTED] in New York from 1981 to 1984. The affiant fails to specify the frequency with which he saw and communicated with the applicant during the requisite period, or any other detail that would lend credence to his claimed knowledge of the applicant and the applicant's residence in the United States during the requisite period. Because the affidavit is inconsistent with statements made by the applicant and because it is lacking in detail, it can be afforded only minimal weight in establishing that the applicant resided in the United States during the requisite period.
- A declaration dated June 29, 2006 from [REDACTED] of Pilgrim Calvary Mission Church, Inc. in which he stated that he has known the applicant since March of 1981 and that in June of 1984 the applicant became a member of the congregation. Here, the declaration is inconsistent with what the applicant stated on his Form I-687 application at part #31 where he didn't list any affiliations or associations with any organizations or church groups. This inconsistency calls into question the credibility of the declarant's statement. Because the declaration is inconsistent with statements made by the applicant on his Form I-687 application, it can be afforded little weight in establishing that the applicant resided in the United States during the requisite period.

In denying the application the director noted that although the applicant had submitted evidence that demonstrated his presence in the United States since 1986, he had not submitted evidence

sufficient to show that he established residence in the United States throughout the requisite period. The director also noted that the applicant had submitted as evidence a photocopy of his first passport which indicated that the applicant's first entry into the United States was on July 19, 1986 at New York, New York.

On appeal, counsel reasserts the applicant's claim of continuous residence in the United States throughout the requisite period and claims that there is sufficient evidence in the record dated prior to July of 1986 to substantiate such claim. No additional evidence is submitted on appeal.

In the instant case, the applicant has failed to provide sufficient, credible and probative evidence to establish his continuous unlawful residence in the United States during the requisite period. He has failed to overcome the issues raised by the director. The photocopies of the envelopes appear to have been altered. The attestations submitted are inconsistent with statements made by the applicant on his I-687 application. Although it appears from the record that the applicant has been present in the United States since July of 1986, there is insufficient evidence to establish continuous residence throughout 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 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 he 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.