



U.S. Citizenship  
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FILE: [REDACTED]  
MSC-05-347-12362

Office: JACKSONVILLE

Date: SEP 03 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 Officer in Charge (OIC), Jacksonville Field 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 OIC 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 OIC 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 the OIC disregarded the evidence and legal significance of the documents submitted. The applicant also provided additional evidence.

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 OIC 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 OIC has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the OIC 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 OIC can articulate a material doubt, it is appropriate for the OIC to either request additional evidence or, if that doubt leads the OIC 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 September 12, 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 listed the following addresses during the requisite period: [REDACTED], North Miami, Florida from August 1981 to March 1985; and [REDACTED] Fort Lauderdale, Florida from March 1985 to July 1993. At part #33 where applicants were asked to list all employment in the United States since entry, the applicant indicated that she was a self-employed housekeeper from August 1981 to March 1985; and that she was a self-employed babysitter from March 1985 to July 1993.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided multiple documents that do not relate to the requisite period.

In support of her claim to meet the residency requirements for temporary resident status, the applicant provided contemporaneous documents including a box side that lists the [REDACTED] address and contains Canadian postage stamps. The postage cancellation date stamps on the

box side are illegible. Therefore, this evidence has no bearing on whether the applicant has established that she resided in the United States throughout the requisite period.

The applicant also provided several photographs. Since the photographs are undated and contain no information indicating their location or the date that they were taken, this evidence also has no bearing on whether the applicant has established that she resided in the United States throughout the requisite period.

The applicant also provided two declarations in support of her application. She submitted a declaration dated September 4, 2005 from [REDACTED] her aunt. The declarant stated that the applicant came to Florida on vacation in summer 1981. The applicant stayed with the declarant at the [REDACTED] address from that time until March 1985. When she was a member of the declarant's household, the applicant helped out by working at the declarant's gas station in Hollywood. The declarant also stated that the applicant has been living in Florida for almost 25 years. This information is somewhat inconsistent with the applicant's Form I-687, where she failed to indicate that she worked at a gas station during the requisite period. This inconsistency casts some doubt on the declarant's ability to confirm that the applicant resided in the United States during the requisite period.

The applicant also provided a declaration from [REDACTED]. The declarant stated that he met the applicant at an Amoco gas station where the applicant worked in Hollywood, Florida. Early in 1985, the declarant offered the applicant a job living in his home and taking care of his children at the [REDACTED] address. The declarant stated that the photos submitted by the applicant were taken while the applicant lived with him. The applicant moved out of the declarant's house in 1990. This information is somewhat inconsistent with the information provided by the applicant on the Form I-687 application, where she failed to indicate that she had worked at an Amoco gas station in the United States. This inconsistency casts some doubt on the declarant's ability to confirm that the applicant resided in the United States during the requisite period. Because the credibility of the declaration is questionable, the declarant's statements regarding the photographs submitted by the applicant will be given only minimal weight.

In denying the application the OIC found 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 the OIC disregarded the evidence and legal significance of the documents submitted. The applicant also provided additional evidence. The documents relating to the requisite period include only photocopies of four pages of the applicant's passport, together with a declaration from the applicant's sister, [REDACTED] explaining the origins of the photocopies. The passport pages include two B-2 visa stamps issued to the applicant on March 20, 1981 and October 26, 1981, respectively, together with a stamp indicating that the applicant entered the United States on July 16, 1981. This provides some evidence of the applicant's presence in the United States on July 16, 1981.

The applicant also provided a printout of a website related to Canadian postage stamps. The printout indicates that landscapes of the national parks by Canadian artists were reproduced on Canadian postage stamps from 1979 to 1986. The page includes photographs of four landscapes. The stamps on the boxtop provided by the applicant do not appear on the printout. Therefore, this document will be given no weight in determining whether the box represented by the submitted boxtop was actually received by the applicant in the United States during the requisite period.

In summary, the applicant has provided documents that do not bear on whether she has established that she resided in the United States throughout the requisite period. She has also provided two affidavits that conflict with her Form I-687 application. Lastly, she has provided a document indicating that she was present in the United States on July 16, 1981. The absence of sufficiently detailed and consistent 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 contradictions between the applicant's Form I-687 and the documents she submitted, and given her 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.