



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

41



FILE: [REDACTED]
MSC-05-155-11177

Office: NEW YORK Date:

SEP 12 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

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 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 shows that the applicant submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on March 4, 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 indicated her/his address in the United States during the requisite period to be [REDACTED] New Jersey from June 1981 until April 1987; and [REDACTED] New Jersey from April 1987 to April 1995. At part #32 where the applicant was asked to list all of his absences from the United States, he indicated that he had no absences during the requisite period. At part #33, where the applicant was asked to list all of his employment in the United States since he first entered, he stated that during the requisite period his first employment was as a dishwasher at an African restaurant in Newark from June 1987, when he would have been 15 years old, until March 1991.

The applicant has the burden of proving by a preponderance of the evidence that he has resided in the United States for the requisite period. 8 C.F.R. § 245a.2(d)(5). To meet his burden of

proof, an applicant must provide evidence of eligibility apart from his own testimony. 8 C.F.R. § 245a.2(d)(6). The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that an applicant may submit to establish proof of continuous residence in the United States during the requisite period. This list includes: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts or letters. An applicant may also submit any other relevant document pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The regulation at 8 C.F.R. § 245a.2(d)(3)(v) states in pertinent part that attestations by churches, unions or other organizations can be considered credible proof of residence if such documents: identify the applicant by name; are signed by an official whose title is shown; show inclusive dates of membership; state the address where the applicant resided during his or her membership period; include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationary; establish how the author knows the applicant; and establish the origin of the information being attested to.

The applicant submitted the following evidence that is relevant to his claim that he resided continuously in the United States for the duration of the requisite period:

- A declaration from the [REDACTED] that is signed by [REDACTED] who does not indicate his title. This declaration is dated December 16, 2005. It is noted that the address of the [REDACTED] is the same address of residence that the applicant indicated he resided at beginning in 1987. The declarant states that the applicant has been a member of the [REDACTED] since 1987. However, he does not state how he was able to confirm the applicant's start date as a member. The declarant fails to state when he personally first met the applicant or to indicate what the applicant's address of residence was during his time as a member. Because this declaration is lacking with regard to the criteria that the regulation at 8 C.F.R. § 245a.2(d)(3)(v) states that declarations from churches and organizations must adhere to, minimal weight can be accorded to this declaration as evidence that the applicant resided in the United States from 1987 until the end of the requisite period.
- An affidavit from [REDACTED] that was notarized on December 19, 2005. Though the affiant submits a photocopy of her birth certificate that shows that she was born in the United States, this birth certificate indicates that one should not accept the certificate unless the seal of the bureau of Vital Statistics is affixed to it. In this case that seal does not appear. The affiant states that she has known the applicant since 1981. She asserts that she and the applicant resided in the same apartment building in Newark and that the applicant played with her younger brother while they were neighbors. However, the affiant does not state the frequency with which she saw the applicant during the requisite period, nor does she state whether there were periods of time during the requisite period when she did not see the

applicant. The affiant does not state the date through which the applicant was her neighbor. Because this affidavit is significantly lacking in detail, it can only be accorded minimal weight as evidence that the applicant resided continuously in the United States for the duration of the requisite period.

The applicant also submitted evidence of his residence in the United States subsequent to the requisite period. The matter in this proceeding is whether he has submitted sufficient evidence to meet his burden of proving that he resided continuously in the United States for the duration of the requisite period. Therefore, evidence pertaining to dates subsequent to the requisite period is not relevant to this proceeding and will not be discussed here.

The director issued a Notice of Intent to Deny (NOID) to the applicant on February 28, 2006. In the NOID, the director stated that the applicant failed to demonstrate that he was eligible to adjust to temporary resident status. The director granted the applicant 30 days within which to submit additional evidence in support of his application.

The director denied the application for temporary residence on January 22, 2007. In denying the application, the director stated that because the applicant did not respond to her NOID, he did not overcome her reasons for the denial of his application.

On appeal, the applicant asserts that he did submit additional evidence for consideration to the director. He states that he made an official request to extend the days granted to him to submit additional evidence in response to the NOID. He goes on to say that he submitted additional evidence in support of his application on August 10, 2006 and states that he is enclosing those documents as well as copies of certificates pertaining to his father's hospitalization and death.

Details of documents the applicant has submitted on appeal are as follows:

- A declaration from the applicant that is dated August 10, 2006. The declarant states that he is submitting additional evidence in support of his application. He apologizes for the delay in submitting this evidence.

A Certificate of Hospitalization, that is dated April 14, 1995 and was submitted with its translation. This certificate states that the applicant's father had surgery and then remained in the hospital from December 8, 1994 until April 14, 1995. Because this document does not pertain to the requisite period, it is not relevant for this proceeding.

A death certificate for the applicant's father, submitted with its translation. This certificate shows that the applicant's father passed away on August 3, 2001. Because this document does not pertain to the requisite period, it is not relevant for this proceeding.

The AAO has reviewed the evidence in the record as noted above and has found that the applicant has failed to meet his burden of proof. Though he has submitted an affidavit from

██████████ this affidavit is significantly lacking in detail such that it can only be accorded very minimal weight as evidence that he resided in the United States during the requisite period. Similarly, the declaration from the ██████████ is lacking with regards to the regulatory requirements that declarations from churches and organizations must adhere to as stated in 8 C.F.R. § 245a.2(d)(3)(v). Therefore, minimal weight can be accorded to the document from the ██████████ ██████████

Though the applicant asserts that he submitted additional evidence in response to the NOID, this evidence was not found in the record.

After reviewing the evidence that the applicant asserts that he submitted in response to the NOID and then re-submitted on appeal, the AAO finds that this evidence did not pertain to the requisite period and was therefore not relevant to his claim that he resided continuously in the United States for the duration of the requisite period.

In this case, the absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the requisite period seriously detracts from the credibility of his 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 lack of sufficiently detailed credible supporting documentation, it is concluded that he has failed to establish by a preponderance of the evidence that he 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.