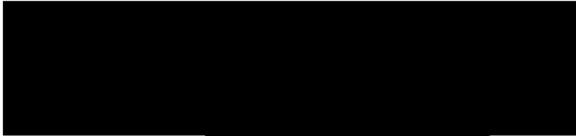




U.S. Citizenship
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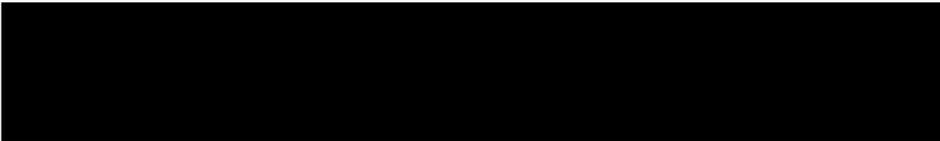
Office: NEWARK

Date: AUG 06 2007

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, 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.


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, New Jersey, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed

The district director determined that the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that he attempted to file a Form I-687, Application for Status as a Temporary Resident, with the Immigration and Naturalization Service (the Service), now Citizenship and Immigration Services (CIS), in the original legalization application period between May 5, 1987 to May 4, 1988. Therefore, the district director concluded that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and denied the application.

On appeal, counsel contends that the denial decision was rendered “against the weight of evidence” and was “riddled with USCIS mistakes” because the decision “did not follow the CSS/LULAC stipulation of settlement.”

An alien applying for adjustment to temporary resident status must establish that he or she entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through the date the application is filed. *See* section 245A(a)(2)(A) of the Immigration and Nationality Act (Act) and 8 C.F.R. § 245a.2(b).

An alien applying for adjustment to temporary resident status must establish that he or she has been continuously physically present in the United States since November 6, 1986. *See* section 245A(a)(3) of the Act and 8 C.F.R. § 245a.2(b)(1).

For purposes of establishing residence and presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), “until the date of filing” shall mean until the date the alien attempted to file a completed Form I-687 application and fee or was caused not to timely file, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. *See* Paragraph 11, page 6 of the CSS Settlement Agreement and paragraph 11, page 10 of the Newman Settlement Agreement.

An alien applying for adjustment of status has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, 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. *See* 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 including affidavits 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.* 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 (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 establish continuous residence in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application with the Service in the original legalization application period from May 5, 1987 to May 4, 1988.

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 August 3, 2004. The applicant indicated on the Form I-687 that he first entered the United States without inspection from Canada on October 10, 1981, and had resided continuously in this country since that date. At block #30, where applicants are instructed to list all residences since their arrival in the United States, the applicant indicated that he lived at "[redacted] Providence, RI" from October 1981 to May 1983; at "[redacted] Plainfield, NJ" from May 1983 to September 1985; at "[redacted] Plainfield, NJ" from September 1985 to April 1987; at "[redacted] North Plainfield, NJ" from April 1987 to November 1987; and at "[redacted] North Plainfield, NJ" from November 1987 to February 1993.

The applicant submitted substantial evidence establishing his residence in the United States from January 31, 1986 to May 4, 1988. In support of his claim of continuous residence in the United States from prior to January 1, 1982 to January 31, 1986, the applicant submitted photocopies of various mailing envelopes with illegible postmarks. These photocopies envelopes have no evidentiary value since the postmarks are illegible.

The applicant submitted an affidavit dated June 28, 2004, from [REDACTED] stating that the applicant was a family friend and that the applicant lived at "[REDACTED] North Plainfield, New Jersey," from November 1987 to February 1993. This affidavit does not relate to the period in question, the period from prior to January 1, 1982 to January 31, 1986.

The applicant also submitted an affidavit from [REDACTED] stating that the applicant lived with him at "[REDACTED] Providence, Rhode Island" from October 1981 to May 1983 and that the apartment lease and monthly bills were all in his name. [REDACTED] stated that the applicant was a family friend, but he did not provide any information as to how he met the applicant or any other verifiable information.

Additionally, the applicant submitted an affidavit dated June 28, 2004, from [REDACTED] of Gainesville, Florida, attesting that the applicant lived at "[REDACTED] Plainfield, New Jersey" from May 1983 to September 1985; "[REDACTED] Plainfield, New Jersey" from September 1985 to April 1987; and at "[REDACTED] North Plainfield, New Jersey," from November 1987 to February 1993. [REDACTED] stated that the applicant shared an apartment with him when he first came to New Jersey in 1983. Again [REDACTED] has not provided any information detailing his acquaintance with the applicant or any other verifiable information regarding the applicant's residence in Plainfield, New Jersey, during the period in question.

On October 3, 2005, the applicant was requested to provide additional evidence to establish continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. Counsel, in response, submitted photocopies of documents previously submitted with the Form I-687 application.

The district director denied the application on October 28, 2005, because the applicant failed to establish continuous residence in the United States from prior to January 1, 1982 through May 4, 1988.

On appeal, counsel reiterates the applicant's claim that he first entered the United States without inspection on October 10, 1981. Counsel states that affiant [REDACTED] purchased a home in Providence, Rhode Island, in 1983. Counsel states that one cannot obtain a loan to purchase a property in the United States unless the person has worked in the United States for at least two years and established credit. Counsel asserts that the purchase of property by [REDACTED] in 1983 means that [REDACTED] was present in the United States in or around June 1981.

Counsel's assertion that [REDACTED] was present in the United States in 1981 is not relevant to the issue to be determined in this proceeding. [REDACTED] dates and places of residence in the United States do not establish the applicant's residence in Providence, Rhode Island, from October 1981 to May 1983.

Counsel submits another affidavit from [REDACTED] of Gainesville, Florida, stating that he has personal knowledge that the applicant lived with [REDACTED] at [REDACTED] Providence, Rhode Island" from 1981 to 1983, and that the applicant lived with him at [REDACTED] Plainfield, New Jersey," when he moved to New Jersey in 1983. [REDACTED] explains that the bills are all in his name and not in the applicant's. [REDACTED] statement that the applicant resided with [REDACTED] at [REDACTED] Providence, Rhode Island," 1981 to 1983 is clearly based on second-hand information provided to him by the applicant and cannot be accepted as evidence of the applicant's continuous residence in the United States from prior to October 1981 to May 1983.

Counsel also submits an affidavit dated November 17, 2005, from [REDACTED] of Bensalem, Pennsylvania, stating that that the applicant lived with [REDACTED] at [REDACTED] Providence, Rhode Island," from October 1981 to May 1983. [REDACTED] explains that her personal knowledge of the applicant's residence in Providence, Rhode Island, from 1981 to 1983 is based on the fact that she is the applicant's cousin and that that she lived at [REDACTED] Providence, Rhode Island," at that time. [REDACTED] states that she and the applicant visited each other often before the applicant moved to New Jersey in 1983.

Finally, counsel submits photocopies of various photographs of the applicant that were purportedly taken between 1981 and 1984. These photos are not sufficient to establish the applicant's continuous residence in the United States during the period in question. There is no indication in the photos as to when and where they were taken over than the handwritten notation beneath each photo. Although counsel indicates one photo has a 1982 calendar in the background, the year on the calendar is too small to read. Even if the photo were taken in 1982, the photo, which is an indoor photo, could have been taken anywhere.

The applicant's claim of continuous residence in the United States during the period from prior to January 1, 1982 to January 31, 1986, relies upon three affidavits attesting to the applicant's residence in Providence, Rhode Island, from 1981 to May 1983 and in Plainfield, New Jersey, from May 1983 to January 1986. These affidavits do not provide sufficient detail or verifiable information to corroborate the applicant's claim. The absence of sufficiently detailed supporting documentation that provides testimony 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. The applicant has failed to submit sufficient

documentation to meet his burden of proof in establishing that he has resided in the United States since prior to January 1, 1982 by a preponderance of the evidence as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M-*, 20 I&N Dec. at 77.

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 from prior to January 1, 1982 as required under section 245A(a)(2) of the Act. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

It is noted that the applicant was convicted on April 24, 1995, in the United States District Court for the District of New Jersey of conspiracy to access computer without authority (conspiracy to commit computer credit fraud) in violation of 18 U.S.C. § 371. The court ordered the applicant to serve six months imprisonment in federal prison, beginning on May 19, 1995, and to be placed on supervised release for a period of one year commencing upon release from confinement. The applicant was also ordered to pay restitution in the amount of \$1,000.00 to Chevy Chase Bank and to pay a special assessment fine of \$25. (Date of Arrest: December 6, 1993; Docket Number [REDACTED]) Conspiracy to commit credit card fraud is a Class A misdemeanor punishable under the provision of 18 U.S.C. § 371 by a maximum of one year. Since the maximum penalty for this crime did not exceed imprisonment for one year and the applicant was not sentenced to more than six months imprisonment, this conviction does not constitute a crime involving moral turpitude. Further, this single Class A misdemeanor conviction does not render the applicant ineligible for temporary resident status pursuant to 8 C.F.R. § 245a.11(d)(1) and 8 C.F.R. § 245a.18(a).

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.