



U.S. Citizenship
and Immigration
Services

PUBLIC COPY
Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

L1

[REDACTED]

FILE: [REDACTED]
MSC-05-264-11163

Office: NEWARK, NJ

Date: DEC 17 2007

IN RE: Applicant: [REDACTED]

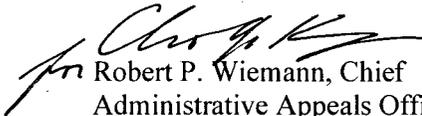
APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the
Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:

[REDACTED]

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. 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, on June 21, 2005. 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 as the applicant had not met his 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 director failed to accord due weight to the witness affidavits that he submitted in support of his application.

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).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), "until the date of filing" shall mean until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file. 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 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. 8 C.F.R. § 245a.2(d)(5).

An applicant shall be regarded as having resided continuously in the United States if, at the time of filing no single absence from the United States has exceeded forty-five (45) days and the aggregate of all absences has not exceeded one hundred eighty (180) days between January 1, 1982 and the date of filing his or her application for Temporary Resident Status unless the applicant establishes that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed. 8 C.F.R. § 245a.2(h)(1)(i).

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 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 (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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided 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 of May 5, 1987 to May 4, 1988. Here, the submitted evidence is not relevant, probative, and credible.

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 June 21, 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 showed his address in the United States for the duration of the requisite period to be [REDACTED] in Jamesburg, New Jersey where he lived from November 1981 until April 1998. At part #31 of the applicant's Form I-687 where he was asked to provide the names of all churches of which he is a member he did not indicate that he is or has ever been a member of any churches in the United States. At part #33 of the applicant's Form I-687, where he was asked to list all of his employment in the United States since he first entered, he indicated that he is a self-employed musician and that he has been employed as such from October of 1988 until the present time. The applicant did not provide an address associated with this employment, but did indicate that it was in Piscataway, New Jersey. It is noted that the applicant did not indicate that he was employed in the United States before October of 1988.

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).

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided the following documentation:

- An affidavit from [REDACTED] in which the affiant states that he first met the applicant on March 21, 1984. He states that he invited the applicant's father to his birthday party and that the applicant came with his father to this party. Though not required to do so, the affiant provided a birth certificate for a child bearing his last name who was born on January 13, 1983 in New Brunswick, New Jersey as proof of his residency in the United States during the requisite period. He also provided his certificate of naturalization, issued on September 11, 1996 as proof of his identity. Here, the affiant failed to indicate where the applicant resided during the requisite period. He did not state the frequency with which he saw the applicant during that time. He did not state whether there were periods of time during which he did not see the applicant during the requisite period. Here, the affiant did not provide a phone number at which he could be reached to verify information in the affidavit. Because this affidavit states that the affiant did not meet the applicant until March 21, 1984, it carries no weight in establishing that the applicant entered the United States on a date prior to January 1, 1982. Because of its significant lack of detail, and because it is not amenable to verification, this affidavit can be afforded minimal weight in establishing that the applicant resided in the United States from March 21, 1984 until the end of the requisite period.
- An affidavit from [REDACTED] that is not dated or notarized. In this affidavit, Ms. [REDACTED] states that she met the applicant at Bethel United Church in what appears to be May 1981. It is noted here, that on his Form I-687 the applicant did not show an address at which he resided in the United States until November 1981. The affiant goes on to say that she sees the applicant twice a week at her church. It is further noted here, that the applicant did not indicate that he is a member of a church on his Form I-687. Though the affiant is not required to do so, she has provided a photocopy of her social security earnings statement, which indicates that she has had Social Security Earnings from 1975 and through the duration of the requisite period. Here, the affiant does not provide an address for the church at which she states both she and the applicant are members. She fails to indicate whether she knows an address at which the applicant resided during the requisite period. She does not indicate whether there were periods of time during which she did not see the applicant. The affiant fails to provide a phone number at which she can be contacted to verify information contained in the affidavit. Because this affidavit is not amenable to verification and is significantly lacking in detail and because it asserts that the applicant is an active member of a church, which conflicts with what he showed on his Form I-687, this affidavit can be given minimal weight in establishing that the applicant continuously resided in the United States for the duration of the requisite period. Further, because this affidavit contains information which is not consistent with what the applicant showed on his Form I-687, doubt is cast on the testimony contained in it.

Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

- An affidavit from [REDACTED] that is dated December 4, 2005. In this affidavit, Mr. [REDACTED] states that he lives in Chapel Hill, North Carolina but that he met the applicant in November of 1981 at his home. He does not indicate where his home was at that time. He goes on to say that he has been friends with the applicant's father since 1981. Here, the affiant fails to provide an address of residence at which he personally knows that the applicant resided during the requisite

period. Though he indicates he is friends with the applicant's father, he does not state that the applicant resided in the United States during the requisite period. Though not required to do so, the affiant submits a certificate stating that he was employed as a substitute teacher in Middlesex County, New Jersey since December of 1981 and a copy of his passport as proof of both his residency and his identity. The affiant fails to provide a phone number at which he can be reached to verify information in the affidavit. Because it is not amenable to verification and because of its significant lack of detail, this affidavit carries little weight in establishing that the applicant resided in the United States for the duration of the requisite period.

Thus, on the application, which the applicant signed under penalty of perjury, he showed that he resided in the United States since November of 1981 and that he has worked in the United States since October of 1988. Though he submitted three (3) affidavits in support of his application, these affidavits were not sufficient to establish by a preponderance of the evidence that the applicant resided continuously in the United States for the duration of the requisite period for the reasons stated above.

In denying the application the director noted the above, and noted that though the applicant would have been nine (9) years old at the time he claims to have entered the United States, he did not submit any evidence of attending school in the United States during the requisite period. She further noted that the applicant failed to submit any evidence of his travel to the United States through Canada in 1981.

On appeal the applicant states that the district director did not give due weight to the affidavits he submitted in support of his application. He does not submit additional evidence in support of that application.

As is stated above, 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. at 79-80. The applicant has been given the opportunity to satisfy his burden of proof with a broad range of evidence pursuant to 8 C.F.R. § 245a.2(d)(3). However, this applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period, and has submitted attestations from only three (3) people concerning that period. These affidavits are not sufficient to satisfy the applicant's burden of proof.

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 from prior to January 1, 1982 through the date he attempted to file a Form I-687 application 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.