U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEW YORK Date: DEC 26 2007
MSC-05-334-12635

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. 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.

for 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, New York. 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 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 was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, the applicant explained that his application was submitted in conformity with requirements of the CSS/Newman Settlement Agreements as explained in a 2003 decision of the "California Eastern District Supreme Court" indicating it is unrealistic to request material evidence from 1981 because so much time has passed. The applicant also explained that he has no evidence of his first entry to the United States because he entered without inspection. He stated that he provided two affidavits in support of his application, and meets the requirements for temporary resident status. Lastly, the applicant explained that he failed to mention two departures from the United States on his application for temporary resident status because of an oversight.

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).

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)(1) 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 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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided in the United States for the duration of the requisite period. Here, the submitted evidence is not relevant, probative, and credible.

The record shows that the applicant initially submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on October 18, 2004. The applicant submitted a modified version of his Form I-687 application on August 30, 2005. At part #30 of the most recent 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], New York, New York from October 1981 to the end of October [redacted]n, New York from November 1981 to the end of December [redacted] New York from January 1982 to August 24, 2005.

In an attempt to establish continuous unlawful residence in the United States since before January 1, 1982, the applicant provided a declaration from [redacted] The declarant stated that he has known the applicant since 1981. This declaration fails to confirm the applicant resided in the United States during the requisite period.

The applicant also submitted a declaration from [redacted], executive administrator assistant for [redacted] The declaration states that the applicant has been a member of the [redacted] community since November 1981, and that he uses the [redacted] for prayer and Islamic services. This letter does not specifically confirm the applicant resided in the United States during the requisite period. In addition, the letter does not conform to regulatory standards for attestations by churches, unions, or other organizations. Specifically, the declaration does not state the address where the applicant resided during the membership period, establish how the author knows the applicant, and establish the origin of the information being attested to. 8 C.F.R. § 245a.2(d)(3)(v).

In denying the application 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 found that 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. The director stated that the applicant conducted his entire interview with an immigration officer with the assistance of a French translator. Considering this, the director determined that the applicant's claims on Form I-687 to have been a salesperson and vendor and to have resided in the United States for 25 years were not credible. It is noted that English language proficiency is not a requirement for temporary resident status. It is reasonable that a person whose first language is not English would choose to conduct an interview in his or her own first language. Therefore, the applicant's decision to conduct the interview in French is not relevant to the determination of whether he resided in the United States during the requisite period. As a result, this aspect of the director's decision is withdrawn. It is noted that a street vendor would likely need some English speaking skills to survive in the United States for more than two decades, but the record does not indicate whether the applicant has any ability to communicate in the English language.

On appeal, the applicant explained that his application was submitted in conformity with requirements of the CSS/Newman Settlement Agreements as explained in a 2003 decision of the "California Eastern District Supreme Court" indicating it is unrealistic to request material evidence from 1981 because so much time has passed. Without a more specific citation, it is unclear to which decision the applicant was referring. The applicant also explained that he has no evidence of his first entry to the United States because he entered without inspection. He stated that he provided two affidavits in support of his application, and meets the requirements for temporary resident status. Lastly, the applicant explained that he failed to mention two departures from the United States on his application for temporary resident status because of an oversight.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the requisite period, and has submitted attestations from only two people concerning that period. The declaration from Mr. [redacted] does not conform to regulatory standards and fails to specifically state that the applicant resided in the United States throughout the requisite period. The declaration from [redacted] fails to state the applicant resided in the United States during the requisite period.

The absence of sufficiently detailed 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 applicant's reliance upon two 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.