

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529

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U.S. Citizenship
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Services

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FILE:

[REDACTED]
MSC 05 259 11817

Office: NEWARK

Date: **JUL 16 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, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director determined 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 or the Service (now Citizenship and Immigration Services or CIS) in the original legalization application period of May 5, 1987 to May 4, 1988. Therefore, the district director determined 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 submits an affidavit to corroborate the applicant's claim of continuous residence in the United States during the requisite period.

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 Immigration and Nationality Act (Act), 8 U.S.C. § 1255a(a)(2).

An applicant 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. Section 245A(a)(3) of the Act, 8 U.S.C. § 1255a(a)(3).

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. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

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 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.

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 16, 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 that he resided at [REDACTED] Bronx, New York” from November 1981 to March 1994. [REDACTED]

At his interview with a CIS officer on March 27, 2006, the applicant stated that he entered the United States in November 1981.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted an affidavit dated November 23, 2005, from [REDACTED]. [REDACTED] stated that he first met the applicant at his uncle’s residence in Bronx, New York, in 1981. [REDACTED] further stated that he took the applicant to his church, Christian Fellowship Faithful Church, where the applicant became very involved in church activities. However, [REDACTED] did

not provide any specific or verifiable information such as the applicant's address(es) during the requisite period.

The applicant included an affidavit dated November 22, 2005, from [REDACTED]. [REDACTED] stated that he first met the applicant in December "19981" at a restaurant. [REDACTED] stated, "I first met [REDACTED] and the mom, Comfort at a party in New York. He was a little boy." The date "19981" is invalid. The "1" appears to be in a different font, as if it was added with a typewriter after the letter was printed.

On appeal, the applicant submits an affidavit dated May 24, 2006, from [REDACTED]. [REDACTED] states that she met the applicant and his mother at a birthday party in New York and that she has subsequently met the applicant several times. However, [REDACTED] does not provide any specific verifiable information such as the date she met the applicant and his mother or the applicant's address(es) during the requisite period.

In summary, the 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 people concerning that period, all three of which lack sufficient verifiable information to corroborate the applicant's claim.

The absence of sufficiently detailed supporting documentation to corroborate the applicant's claim of continuous residence in the United States during 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.