

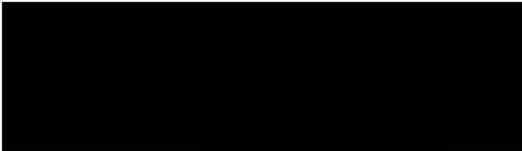
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U.S. Citizenship
and Immigration
Services

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FILE: [Redacted]
MSC-05-179-13194

Office: Cleveland

Date: FEB 22 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. 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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, Cleveland. 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 she 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 her 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 erred in denying the petition and submits a letter of employment and two notarized affidavits.

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, 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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that she resided in the United States for the duration of the requisite period. Here, the submitted evidence does not establish the required residence.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on March 28, 2005. At part #30 of the Form I-687 application where applicants are asked to list all residences in the United States since first entry, the applicant listed her first address in the United States as Columbus, Ohio, from April 1999 to the present.¹ At part #33, she listed her first employment in the United States as a self-employed hair braider in Columbus, Ohio, from July 2000 to March 2005.

The applicant submitted the following documentation:

- A March 16, 2006 employment letter from Diversified Home Health Services, Inc. signed by [REDACTED], Office and Personnel Manager, stating that the applicant has worked for the company for the past year and a half as a full-time nurse’s aid. The letter includes

¹ The applicant also listed Lanham, Maryland as her address “from June 2000 to April 1999.”

█'s telephone number. Although the statement is on company letterhead, it is not notarized. This letter fails to meet certain regulatory standards set forth at 8 C.F.R. § 245a.2(d)(3)(i), which provides that letters from employers must include the applicant's address at the time of employment; exact period of employment; whether the information was taken from official company records and where records are located and whether CIS may have access to the records; if records are unavailable, an affidavit form-letter stating that the employment records are unavailable may be accepted which shall be signed, attested to by the employer under penalty of perjury and shall state the employer's willingness to come forward and give testimony if requested. The statement by █ does not include much of the required information and can be afforded minimal weight as evidence of the applicant's residence in the United States for the duration of the requisite period. Furthermore, the applicant did not identify this employer on her Form I-687. This letter does not establish that the applicant entered the United States before January 1, 1982 or that the applicant meets the requirements of Sections 245A(a)(2) or 245A(a)(3) of the Act, or the regulations at 8 C.F.R. § 245a.2(b)(1). Given these deficiencies, this letter does not support the applicant's claims of continuous residence and presence in the United States.

- A notarized declaration from █ dated November 30, 2005 stating that he has known the applicant for the "past five years." The declarant provided an address and a telephone number, but did not provide proof of identification. This declaration does not establish that the applicant entered the United States before January 1, 1982 or that the applicant meets the requirements of Sections 245A(a)(2) or 245A(a)(3) of the Act, or the regulations at 8 C.F.R. § 245a.2(b)(1). Given these deficiencies, this letter does not support the applicant's claims of continuous residence and presence in the United States.
- A notarized declaration from █ dated November 29, 2005 stating that she has known the applicant for the "past sixteen years." The declarant provided an address, a telephone number, and proof of identification. It is noted the declarant lives in the State of New York and did not specify where she first met the applicant or how she dates her acquaintance with the applicant. This declaration does not establish that the applicant entered the United States before January 1, 1982 or that the applicant meets the requirements of Sections 245A(a)(2) or 245A(a)(3) of the Act, or the regulations at 8 C.F.R. § 245a.2(b)(1). Given these deficiencies, this letter does not support the applicant's claims of continuous residence and presence in the United States.

The director issued a notice of intent to deny on February 8, 2006 and denied the application for temporary residence on May 18, 2006. In denying the application, the director found that the applicant was not eligible for *CSS/Newman* class membership. Thus, the director determined that the applicant had failed to meet her burden of proof by a preponderance of the evidence.

On appeal, the applicant does not assert that she arrived in the United States before January 1, 1982 and there is no evidence in the record of proceeding indicating otherwise.

In summary, the applicant has not provided any evidence of entry to the United States before January 1, 1982. The employment letter and affidavits lack probative value for the reasons noted. 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 credible supporting documentation, it is concluded that she has failed to establish by a preponderance of the evidence that she entered the United States prior to January 1, 1982 or that she 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.