

U.S. Department of Homeland Security
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**U.S. Citizenship
and Immigration
Services**

PUBLIC COPY

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FILE:

MSC-05-054-10075

Office: NEW YORK

Date:

FEB 25 2008

IN RE:

Applicant:

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.

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, 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 further determined that the applicant had failed to establish his continuous physical presence from November 6, 1987 through the date he attempted to file a Form I-687 or was caused not to file.

The director's decision also noted that the applicant had failed to provide any tangible evidence or credible documentation in support of his claim, and that there were inconsistencies found in his statements as they relate to his travel outside the United States, and that the affiants could not be reached.

On appeal, the applicant asserts that he resided in the United States as required and that he was outside the United States for 39 days, which is not a sufficient period of time to break his continuous residence. He submitted additional documentation as evidence.

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).

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. See 8 C.F.R. § 245a.2(d)(6).

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 AAO notes that, as a class member under the CSS/Newman Settlement Agreements, the applicant is not required to prove entry and residence in the United States with contemporaneous documents from the relevant time period; that portion of the decision regarding a requirement for such “tangible evidence” will be withdrawn. The AAO also notes that an applicant for temporary residence under the CSS/Newman Settlement Agreements is not required to maintain residency for the “statutory period from January 1, 1982 until May 4, 1988;” that portion of the decision regarding residence will also be withdrawn. An applicant for temporary residence under the CSS/Newman Settlement Agreements need only 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 applicant attempted to file a Form I-687 application or was caused not to timely file.

The issues in this proceeding are whether the applicant has furnished sufficient credible evidence to establish his continuous unlawful residence in the United States prior to January 1, 1982, and continuous physical presence in the United States for the requisite period.

Here, the applicant has failed to submit evidence that is credible, relevant, or probative sufficient to overcome the director's decision with respect to his residence in the United States. The applicant stated under oath on December 22, 2005, during his interview with Citizenship and Immigration Services, that he entered the United States in 1981. The applicant also indicated on his Form I-687 application that he resided and was employed in the United States since January of 1981. However, the record also contains the applicant's signed and dated Form I-589, Application for Asylum and for Withholding of Deportation, in which he stated at part #A14 that he last arrived in the United States in February of 1988. It is further noted that the applicant stated under penalty of perjury that he was fleeing his country because he feared for his life and did not wish to return. The applicant has failed to provide a plausible explanation for the inconsistencies and has not submitted any independent documentary evidence to corroborate his claim.

Regarding residence in the United States during the requisite period, the record contains a number of attestations that do not address the applicant's presence in the United States prior to January 1, 1982, and will therefore be afforded only minimal weight. The record also contains attestations from individuals who could not be reached. The applicant submitted handwritten copies of individual income tax returns for the 1982 through 1988 tax years that are unsigned and that have not been verified as having been received by the Internal Revenue Service. This evidence is insufficient to support a conclusion that the applicant entered the United States before January 1, 1982, and resided in the United States for the requisite period.

The applicant submitted a letter from [REDACTED] of the [REDACTED] [REDACTED] in which he stated that the applicant has been a member of the parish community from January of 1981 to November 1988, and from 1990 to 2004. The Deacon also stated that the applicant has participated in Sunday Liturgies and other parish activities. This statement is inconsistent with the applicant's statement on Form I-687, at part #31 where the applicant was asked to list all affiliations or associations, clubs, organizations, churches, unions, businesses, etc., the applicant stated, "NONE." This inconsistency calls into question the affiant's ability to confirm that the applicant resided in the United States during the requisite period. Because this affidavit contains testimony that conflicts with what the applicant showed on his Form I-687, doubt is cast on assertions made in the affidavit. In addition, the letter does not conform to regulatory standards for attestations by churches. Specifically, the letter does not show specific inclusive dates of membership, it does not state the address where the applicant resided during the alleged membership period, nor does it establish the origin of the information being attested to. 8 C.F.R. § 245a.2(d)(3)(v). Because this affidavit conflicts with other evidence in the record, is lacking in detail and probative value, and does not conform to regulatory standards, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of residence in the United States prior to January 1, 1982, and continuous residence for the requisite period detracts from the credibility of his 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 conflicting statements made by the applicant, the paucity of credible supporting documentation, and the applicant's reliance upon affidavits with minimal probative value, it is concluded that he has failed to meet his burden of proof and failed to establish continuous residence in an unlawful status in the United States prior to January 1, 1982 and 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. Portions of the decision, noted *supra*, will be withdrawn. The appeal will be dismissed.

It is noted that the applicant was ordered deported by the Immigration Court, New York, New York, on March 12, 1997.

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