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U.S. Citizenship
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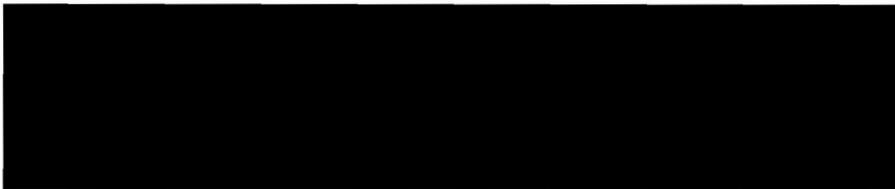
Applicant:



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, on April 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 found that the information contained in the three affidavits submitted by the applicant was not credible, probative or amenable to verification, nor was it corroborated by any other evidence in the record. 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, counsel for the applicant emphasizes that the applicant entered the United States without inspection and does not have any evidence from "35 years ago." Counsel asserts that the affidavits submitted are credible and the affiants have proof that they were in the United States during the requisite period. The applicant submits new statements from individuals who previously provided letters in support of his application, along with proof of the affiants' presence 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 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 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 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 April 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 that he resided at [REDACTED] in Tarrytown, New York from October 1981 to February 1983; at [REDACTED] in Tarrytown from February 1983 until April 1986; and at [REDACTED] in Croton, New York from April 1986 to May 1989. 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 was employed by [REDACTED] from December 1981 until July 1984; "Apple Maintenance" from July 1984 to June 1986; and [REDACTED] from June 1986 until December 1987." The applicant indicated that he did not know the address for any of these employers.

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).

The applicant submitted the following documents in support of his application:

1. A letter dated July 22, 2002, from [REDACTED] a resident of Ossining, New York. Mr. [REDACTED] stated that he has known the applicant "for the past 20 years." He attests to the applicant's integrity, and maturity, and describes the applicant as a "family man," who provides material, emotional and spiritual support for his family. Here, the declarant did not indicate exactly when, where or under what circumstances he met the applicant, or provide other verifiable information that would assist in corroborating his claim that he has known the applicant in the United States for 20 years. He does not indicate what his relationship with the applicant is, state how frequently and under what circumstances he saw him during the requisite period, or provide any details regarding the events and circumstances of the applicant's residence in the United States, such as his addresses of residence, that would lend credibility to his statement. [REDACTED] statement is not notarized, and it is not accompanied by documentation identifying [REDACTED] or evidence that he resided in the United States during the requisite period. His reference to the applicant as a "family man," also appears to be at odds with the applicant's claim to be divorced with no children. Because the statement is significantly lacking in detail and provides no verifiable information, it can be given only minimal evidentiary weight.
2. A letter dated July 30, 2002 from [REDACTED], a resident of Croton-on-Hudson, New York. [REDACTED] states that he has known the applicant since 1985, that the applicant "has rented an apartment from us," and that the applicant has performed various painting jobs for [REDACTED] construction company. [REDACTED] did not indicate where or under what circumstances he met the applicant, how he dates his acquaintance with him, or how often he had contact with the applicant during the requisite period. Although he claimed to have rented an apartment to the applicant, he does not identify the address of the apartment, provide any records related to a lease or rental payments, nor indicate the dates during which the applicant was his tenant. Based on this general statement, it cannot be determined that he rented an apartment to the applicant during the requisite period. [REDACTED] also provided no verifiable information regarding the applicant's work for him as a painter, such as the name of the company he owns, its location, the applicant's dates of employment, or employment records. The applicant stated on his Form I-687 that he worked for "American Painting" from March 1989 to July 1993, outside of the requisite period. [REDACTED] statement is not notarized, nor is it accompanied by proof of his identity. Because the statement is lacking in significant details, its probative value in establishing the applicant's residence in the United States since 1985 is extremely limited.

3. A photocopy of an undated letter from [REDACTED] a resident of Ossining, New York. [REDACTED] stated that she met the applicant in 1981, and that he assisted her with lawn maintenance work "on and off for about five or six years." [REDACTED] did not indicate how she met the applicant or how she dates her acquaintance with him. She did not indicate that she had personal knowledge of where the applicant was residing, or how frequently she had contact with him during the requisite period. The applicant was 14 years old in 1981 and states that he resided in Tarrytown, New York. It is not clear how he arranged to perform yard work for [REDACTED] in Ossining, New York during this time. The applicant also claims to have had other employers during this period. [REDACTED] did not claim to have contact with the applicant for the duration of the requisite period, as, based on her statement, the applicant worked for her until 1986 or 1987. As with the other letters discussed above, the lack of detail in this letter greatly diminishes its probative value.
4. A letter dated September 7, 2004 from [REDACTED], a clinical audiologist based in Carmel, New York. [REDACTED] states that the applicant was a patient of hers beginning in March 1981, and that he came to her for annual visits until February 1987. The applicant claims that he first entered the United States in October 1981. Therefore, this letter was inconsistent with the applicant's own testimony and not credible.

The applicant also submitted in support of his application various documentation dated subsequent to the relevant 1981 to 1988 period.

The applicant was interviewed by a Citizenship and Immigration Services (CIS) officer on January 10, 2006. On February 1, 2006, the director issued a Notice of Intent to Deny (NOID) the application, advising the applicant that he had failed to establish eligibility for the benefit sought. The director highlighted the deficiencies of the letters submitted in support of the application, as discussed above. The director granted the applicant 30 days in which to submit additional evidence.

In response to the NOID, the applicant provided an affidavit in which he stated that he entered the United States without inspection on October 23, 1981 and has resided in the United States since that time. He stated that he was very young when he entered the United States and it is therefore "almost impossible to find any more evidence" to submit in support of his claim. He noted that he was submitting two "corrected affidavits to clarify some discrepancies with the dates."

In support of his response, the applicant submitted:

1. An un-dated letter from [REDACTED], who stated that she met the applicant in December 1981. She stated that the applicant was "only a boy" but helped with preparing for the holidays, cleaning dog runs, sweeping and shoveling, when needed. While [REDACTED] identifies when she first met the applicant, this letter is actually less detailed than the letter previously submitted and resolved none of the deficiencies discussed above with respect to the previous letter.
2. A new letter from [REDACTED] dated February 13, 2006. She states that there was a typographical error in the previous letter and that the applicant first saw her in March 1982, not

March 1981. She did not indicate the source of this information or provide any medical records or other documentation to clarify the inconsistent dates.

The director denied the application on July 22, 2006. The director acknowledged the statements submitted by [REDACTED] and [REDACTED], but noted that they did not meet guidelines for credible affidavits, which should contain some document identifying the affiant, some proof that the affiant was in the United States during the statutory period, and some proof of a **relationship between** the applicant and the affiant. The director further noted that the medical letter from [REDACTED] **was not supported by** any medical records to substantiate her claim that the applicant was **her patient between** March 1982 and February 1987. The director concluded that the evidence in the record was insufficient to establish the applicant's eligibility for temporary residence under Section 245A of the Act.

On appeal, counsel for the petitioner states that the affidavits submitted by the applicant are credible and that the affiants have proof that they were in the United States during the statutory period. Counsel asserts that the director abused her discretion by rejecting the affidavits. In support of the appeal, the applicant submits the following new evidence:

1. A letter from [REDACTED] dated August 14, 2006. [REDACTED] states that she has lived at her current address since 1964, and provides evidence to establish that she resided in New York during the requisite period.
2. A new, notarized letter from [REDACTED], dated August 16, 2006. In the new letter, Mr. [REDACTED] claims to have known the applicant since 1982. He provides no further information, nor does he clarify why he previously indicated that he met the applicant in 1985. Because his testimony is inconsistent, it has little probative value. As discussed above, the initial letter provided by [REDACTED] was too general to be given any significant evidentiary weight.
3. A new letter from [REDACTED], who states that medical records in the hospital where the applicant was seen are only kept for 7 years. She states that although she does not have access to the official records, she remembers that the applicant came to her for annual visits from 1982 until 1987. She does not clarify how she is able to recollect the dates of annual office visits for a patient she last saw nearly 20 years ago. This letter also implies that she saw the applicant somewhere other than at her current office; but she does not indicate the name or location of the hospital to which she refers.

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. 77, 79-80 (Comm. 1989). 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 un-notarized letters from only four (4) individuals concerning that period, none of which are credible or probative for the reasons discussed above. As such, the applicant has not met the necessary continuous residency or

continuous physical presence requirements for legalization pursuant to section 245A of the Act. These affidavits are not sufficient to satisfy the applicant's burden of proof.

The absence of sufficiently detailed, consistent 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.