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



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

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[REDACTED]

FILE:

[REDACTED]

Office: VIRGINIA

Date:

**MAR 31 2008**

MSC 05 202 13536

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.

*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, Fairfax, Virginia. 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 20, 2005. The applicant attached: a statement by [REDACTED] that is dated February 1, 2005 but notarized on April 7, 2005 (hereinafter referred to as the February 1, 2005 affidavit); another statement by [REDACTED], entitled "Affidavit of Residence," notarized on April 7, 2005 (hereinafter referred to as the affidavit of residence); an April 7, 2005 letter of employment for the applicant's employment from December 6, 2004 to present (April 7, 2005); and a phone bill, a certificate of technical training, a driver's license, and a document of insurance all dated in 2004 or 2005.

On May 1, 2006, the date of the applicant's interview, the director requested further evidence (RFE) to substantiate the applicant's claim that he was in the United States during the time periods he claimed. The director noted that the applicant had 12 weeks from May 1, 2006 to mail the requested documents. On August 17, 2006, the director denied the petition, determining that the applicant had failed to respond to Citizenship and Immigration Services' (CIS) request.

On September 19, 2006, counsel for the applicant submitted a delivery confirmation notice showing a delivery in Fairfax, Virginia on July 17, 2006. Counsel asserts that the applicant timely responded to the RFE and submits the documentation provided in response to the RFE. The documentation included a medical statement dated February 4, 1988; a layaway receipt dated June 2, 1985 issued to the applicant; a medical statement dated December 9, 1986; and the same two affidavits signed by [REDACTED] that had been submitted with the Form I-687. The AAO will review the record in its entirety.

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). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The credibility of an affidavit may be assessed by taking into account such factors as whether the affiant provided a copy of a recognized identity card, such as a driver's license; whether the affiant provided some proof that he or she was present in the United States during the requisite period; and whether the affiant provided a valid telephone number. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

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.

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 have been physically present in the United States from November 6, 1986 until the date of filing or attempting to file the application.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to establish his entry into the United States prior to January 1, 1982 and continuous unlawful residence since such date through the date the application was filed as defined above.

The only evidence in the record regarding the applicant's entry into the United States and continuous unlawful residence to June 2, 1985 - the date of a layaway receipt issued to the applicant - is Ms. [REDACTED]'s affidavit of residence and February 1, 2005 affidavit. In the February 1, 2005 affidavit, Ms. [REDACTED] stated that the applicant had provided childcare in her home at [REDACTED] Arlington, Virginia from December 12, 1980 to October 15, 1985 and in her next home, [REDACTED] Cottage City, Maryland, from October 15, 1985 through January 1992. According to the February 2005 affidavit, for his services the applicant received room and board during employment at the first house and \$100 per week during employment at the second house. However, in the April 7, 2005 affidavit, Ms. [REDACTED] indicated that the applicant contributed toward the payment of rent and household bills also during his employment at the first home, from December 12, 1980 to October 15, 1985.

The AAO notes that the inconsistency in Ms. [REDACTED] affidavits' information about what the applicant received in return for his services reduces its credibility. The AAO also observes that the applicant was born in September 1965, and so would have been 15 when he began providing childcare services for Ms. [REDACTED]. The affiant does not provide her telephone number. Ms. [REDACTED] statements do not provide details of the relationship with the applicant, such as how the 15-year old applicant came to reside in the household, to provide childcare, or to contribute toward the payment of rent and household bills. The affidavits contain no explanatory details and no indication of persons or institutions that would verify the affidavit's information. These two affidavits along with the applicant's own statements comprise the only documentation of the applicant's residence in the United States from prior to January 1, 1982 to June 2, 1985. For the reasons just discussed, the affidavits have little probative value.

The photocopy of the layaway receipt that is dated June 2, 1985 is evidence that the applicant may have been in the United States on the date of sale. However, it addresses such a limited period as to have little weight in establishing the applicant's continuous residence for the period required for approval of his application.

The record of proceedings includes copies of the following medical documents: (1) a past-due bill for emergency medical treatment provided to the applicant on December 27, 1987; (2) a health consultant's letter, dated December 12, 1986, that reports on a physical examination of the applicant conducted on December 9, 1986; and (3) a physician's analysis of the results of the physical examination of December 9, 2006. These documents appear sufficiently credible to establish that the applicant was present in the United States in December 1986. However, the documents do not establish the applicant's presence in the United States outside that limited timeframe.

The AAO has considered all of the documents submitted into the record of proceedings, including those submitted on appeal. The AAO has weighed the evidentiary value of each document and the evidentiary value of all of the documents considered in the aggregate. The AAO finds that the evidence of record is not sufficient to support a conclusion that the applicant entered the United States prior to January 1, 1982

and continuously resided unlawfully in the United States for the period required for approval of his application.

The absence of sufficient credible and probative documentation to corroborate the applicant's claim of continuous residence for the requisite period seriously 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 earlier discussed limitations of the supporting documentation, it is concluded that he has failed to meet his burden of proof and failed to establish continuous residence in an unlawful status 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. The appeal will be dismissed.

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