



U.S. Citizenship  
and Immigration  
Services

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LI

FILE: [Redacted]  
MSC-05-299-13355

Office: NEW YORK

Date: AUG 13 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:



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

The director determined the applicant had not proven by a preponderance of the evidence that he has resided in the United States for the requisite periods, is admissible to the United States under the provisions of Section 245A of the Immigration and Nationality Act, and is otherwise eligible for adjustment of status under this section. As a result, the director denied the application.

On appeal, the applicant indicated that sufficient weight was not accorded to the witness affidavits he had submitted.

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 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 applicant 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 applicant 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 and 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.

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 Citizenship and Immigration Services (CIS) on July 26, 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 his only address in the United States during the requisite period to be at [REDACTED], Bronx, New York from June 1981 to March 1991.

In response to a Notice of Intent to Deny Application for Status as a Temporary Resident issued on November 15, 2005, the applicant submitted affidavits from three individuals. [REDACTED] stated in his form affidavit that the applicant is personally known to him, and confirmed the applicant's address for various times. The affiant confirmed the applicant lived at [REDACTED] Bronx, New York from June 1981 to March 1991. It is noted that the information provided by the affiant is inconsistent with the applicant's I-687, which indicates the applicant resided at [REDACTED], as opposed to [REDACTED]. This inconsistency calls into question whether the affiant can actually confirm the applicant resided in the United States throughout the requisite period. The affiant failed to provide any information regarding his relationship to the applicant or the manner in which they became acquainted. The affiant provided identity documentation in the form of copies of his green card and visa stamp. The affiant also provided evidence of his presence in the United States during the requisite period, in the form of a student identification card. However, this student card indicates the applicant was enrolled for the fall term of 1982, fall and spring terms of 1983, and fall and spring terms of 1984 at Oklahoma State University in Stillwater, Oklahoma. Since this document places the affiant in Oklahoma City rather than New York for lengthy periods during the requisite period, it further calls into

question whether the affiant can actually confirm that the applicant resided in the United States throughout the requisite period.

The applicant also submitted an affidavit from [REDACTED]. This affiant confirmed that the applicant is personally known to him, "being a former soccer team mate, neighborhood friend since 1981 in the city of New York." The affiant confirmed that the applicant resided at [REDACTED] Bronx, New York from June 1981 to March 1991. It is noted that the information provided by the affiant is inconsistent with the applicant's I-687, which indicates the applicant resided at [REDACTED] as opposed to [REDACTED]. This inconsistency calls into question whether the affiant can actually confirm the applicant resided in the United States throughout the requisite period. The affiant also submitted a copy of the biographical page of his United States passport. Although not required, the affiant did not submit evidence of his continuous presence in the United States during the requisite period. The affidavit was accompanied by a letter from [REDACTED] Director of Personnel Services at Oklahoma City Community College. In this letter, [REDACTED] confirmed that the affiant, [REDACTED], worked at Oklahoma City Community College from February 17, 1981 until November 11, 1985. According to the letterhead on which the letter is written, Oklahoma City Community College is located in Oklahoma City, Oklahoma. This letter calls into question the affiant's statements that identify the basis of his knowledge regarding the applicant's residence during the requisite period. Specifically, it is unclear how the affiant could have met the applicant in 1981 and been a neighborhood friend since 1981 in New York City, although the affiant was working as a security guard from February 17, 1981 until November 11, 1985 in Oklahoma City.

At his interview with a CIS officer on April 11, 2006, the applicant stated that when he first came to the United States he lived at [REDACTED] in New York for about ten years.

An additional Notice of Intent to Deny (NOID) was issued to the applicant on April 17, 2006. This Notice specifically referenced the inconsistency between [REDACTED] affidavit and the letter that confirmed his employment. The notice also identified the inconsistency between [REDACTED] affidavit and the copy of his student card. The NOID also indicated that the applicant stated he did not apply for the amnesty program and had no knowledge of the class action lawsuits and, as a result, that he is not eligible to apply for legalization.

In response to the second NOID, the applicant's attorney attempted to explain the apparent inconsistencies related to the affidavits the applicant had submitted. The attorney stated that, although someone might not be living in a particular state, this fact does not preclude that person from knowing that someone he knows resides in a certain city at a particular address. The applicant provided another affidavit from [REDACTED], in which he explained that he attended college in New York from 1979 to 1981. While he was in New York he met the applicant's uncle who had been his schoolmate in Ghana. He then met the applicant through the applicant's uncle. The affiant has been in touch with the applicant's uncle until his departure to Oklahoma. The affiant has known the applicant ever since. This affidavit still fails to clarify how the affiant knows the applicant resided continuously in the United States during the requisite period.

In his response to the NOID, the attorney also attempted to explain the applicant's prior statements regarding class membership. In this case, the director adjudicated the Form I-687 application on the merits. As a result, the director is found not to have denied the application for class membership.

In denying the application the director acknowledged the second affidavit submitted by [REDACTED] and found that there was no proof the affiant had direct personal knowledge of the events and circumstances of the applicant's residency. As a result, the director found that the applicant had not proven by a preponderance of the evidence that he has resided in the United States for the requisite periods, is admissible to the United States under the provisions of Section 245A of the Immigration and Nationality Act, and is otherwise eligible for adjustment of status under this section.

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 affidavits that conflict with their supporting documentation or with the applicant's statements on Form I-687 and in his interview with an immigration officer. Specifically, the affidavits confirm the applicant resided at a different house number than the number he listed on Form I-687 and provided in his interview with an immigration officer. In addition, [REDACTED]'s first affidavit conflicts with his supporting documentation that indicates he was in Oklahoma for approximately three years during the requisite period. The second affidavit from [REDACTED] provides no explanation for his ability to confirm the applicant's continuous residence in New York while [REDACTED] was residing in Oklahoma. Lastly, Mr. Benn's affidavit conflicts with his employment confirmation letter that indicates he was in Oklahoma from February 17, 1981 to November 11, 1985. Although this inconsistency was identified in the NOID, the applicant's response to the NOID did not address the inconsistency.

The absence of consistent supporting 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 contradictory statements contained in the applicant's I-687 application, record of the interview with an immigration officer, affidavits, and supporting documentation; and 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.