



U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE: [REDACTED]  
MSC-05-095-23517

Office: NEW YORK Date: DEC 26 2007

IN RE: Applicant: [REDACTED]

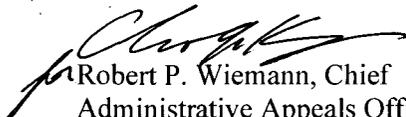
APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:

[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.

  
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 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, counsel for the applicant asserted that the decision violates the applicant's due process rights and is contrary to the CSS/Newman Settlement Agreements. Counsel stated that the application was adjudicated improperly, the applicant submitted ample documentation, and the director failed to review the documents in good faith and placed unreasonable demands on the applicant. The applicant also provided copies of documents and a written statement that she had already 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 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 (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 is not relevant, probative, and credible.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on January 3, 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 listed the following addresses during the requisite period: [REDACTED] New York from May 1981 to April 1985; and [REDACTED] Brooklyn, New York from April 1985 to December 1990. At part #31 where applicants were asked to list all affiliations or associations, clubs, organizations, churches, unions, businesses, etc., the applicant listed UFT in New York, New York from 1992 to present.

The applicant provided three form declarations with her application. In his declaration, [REDACTED] stated that he met the applicant at a religious function at Celestial Church of Christ, in Brooklyn, New York in December 1981. The declarant stated that he knows the applicant lived

in the United States between 1982 and May 1988 because he and the applicant saw each other at church services most Wednesdays, Fridays, and Sundays; at several church gatherings; and at other social gatherings. The declarant failed to provide address information for the applicant during the requisite period. This declaration is found to be inconsistent with the information provided on Form I-687, where the applicant failed to list her affiliation or association with the Celestial Church of Christ. The declarant provided documents to establish his presence in the United States during the requisite period. Since the declaration is inconsistent with the applicant's Form I-687 and provides only limited detail regarding the applicant's residence in the United States, the documents establishing the declarant's presence are not relevant to determining whether the applicant resided in the United States continuously throughout the requisite period.

In his declaration, [REDACTED] stated that he met the applicant in August 1981 at a celebration of [REDACTED], where he realized that the applicant's father came from the same village as the declarant. The declarant stated that, between 1982 and May 1988 the applicant continuously lived in the United States. The declarant met the applicant at several gatherings as well as at several meetings of the [REDACTED] in New York City. The declarant failed to provide address information for the applicant during the requisite period. This declaration is found to be inconsistent with the information provided on Form I-687, where the applicant failed to list her affiliation or association with [REDACTED]. The declarant provided documents to establish his presence in the United States during the requisite period. Since the declaration is inconsistent with the applicant's Form I-687 and provides only limited detail regarding the applicant's residence in the United States, the documents establishing the declarant's presence are not relevant to determining whether the applicant resided in the United States continuously throughout the requisite period.

In her declaration, [REDACTED] stated that she met the applicant in New York in May 1981, when the applicant came to the declarant's house to drop off some clothes from the applicant's mother. The applicant's mother is a friend of the declarant and asked the declarant to "keep an eye on" the applicant. The declarant stated that she knows the applicant was living in the United States between 1982 and 1988 because the applicant visited the declarant, spent some holidays and weekends at her house, and befriended her children. This declaration failed to provide address information for the applicant during the requisite period.

In response to a Form I-72 request for additional documentation issued on July 12, 2005, the applicant provided requested educational documentation that does not relate to the requisite period. The applicant also provided the telephone number for Ms. [REDACTED] and a flyer indicating that declarant [REDACTED] died on January 22, 2005.

In response to a Notice of Intent to Deny (NOID) issued on June 30, 2006, the applicant attached recent pay stubs, criminal court dispositions, and a statement signed by the applicant. The statement attempted to resolve questions raised by the director in the NOID. The statement also provided [REDACTED] telephone number.

In denying the application, 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 found 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, counsel for the applicant asserted that the decision violates the applicant's due process rights and is contrary to the CSS/Newman Settlement Agreements. Counsel stated that the application was adjudicated improperly, the applicant submitted ample documentation, and the director failed to review the documents in good faith and placed unreasonable demands on the applicant. On appeal, the applicant also provided copies of documents and a written statement that she had already submitted.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the requisite period, and has submitted declarations from only three people concerning that period. The declarations from [REDACTED] and [REDACTED] are inconsistent with the information provided on the applicant's Form I-687. Considering that it fails to provide the applicant's addresses during the requisite period, and considering the inconsistencies in the other documents presented, the declaration from [REDACTED] is insufficient to establish by a preponderance of the evidence that the applicant resided in the United States throughout the requisite period.

The absence of sufficiently detailed 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 contradictions between the applicant's statements on her application and the declarations she submitted, and given her reliance upon documents with minimal probative value, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States for the requisite period 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.

Although counsel asserted that the applicant's right to due process was violated, he has not shown that any violation of the regulations resulted in substantial prejudice to the applicant. *See De Zavala v. Ashcroft*, 385 F.3d 879, 883 (5th Cir. 2004) (holding that an applicant "must make an initial showing of substantial prejudice" to prevail on a due process challenge). The applicant has fallen far short of meeting this standard. A review of the record and the adverse decision indicates that the director properly applied the statute and regulations to the application. The applicant's primary complaint is that the director denied the application. As previously

discussed, the applicant has not met her burden of proof and the denial was the proper result under the regulations and the CSS/Newman Settlement Agreements. Accordingly, the applicant's claim is without merit.

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