



U.S. Citizenship
and Immigration
Services

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[REDACTED]

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FILE: [REDACTED] MSC 05 194 13558

Office: Newark

Date: FEB 01 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, Newark, New Jersey, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed

The district director determined that the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that he attempted to file a Form I-687, Application for Status as a Temporary Resident, with the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS) in the original legalization application period between May 5, 1987 to May 4, 1988. Therefore, the district director concluded that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and denied the application.

On appeal, the raises objections to the denial of his application on a point by point basis. The applicant submits documentation in support of the appeal.

An alien applying for adjustment to temporary resident status must establish that he or she entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through the date the application is filed. *See* section 245A(a)(2)(A) of the Immigration and Nationality Act (Act) and 8 C.F.R. § 245a.2(b).

An alien applying 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. *See* section 245A(a)(3) of the Act and 8 C.F.R. § 245a.2(b)(1).

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 alien 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. *See* Paragraph 11, page 6 of the CSS Settlement Agreement and paragraph 11, page 10 of the Newman Settlement Agreement.

An alien applying 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, its credibility and amenability to verification. *See* 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 including affidavits 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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to establish continuous residence 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 from 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 12, 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 “222 Clif A, D, 11, NY, 11216” from June 1981 through at least the date of the termination of the original legalization application period on May 4, 1988.

In support of his claim of continuous residence in the United States since prior to January 1, 1982, the applicant submitted an affidavit that is signed by [REDACTED] stated that he knew the applicant since they attended elementary school in the Ivory Coast. [REDACTED] declared that he and the applicant have become best friends in America from 1981 to the present. However, [REDACTED] did not provide any specific and verifiable testimony, such as the applicant’s

address(es) of residence in the United States since 1981, that would tend to corroborate the applicant's claim of residence in this country for the period in question.

The applicant included photocopies of four photographs, three of which bear the stamp "OCT 1988." Therefore, the three photographs bearing the date stamps cannot be considered as relevant evidence as the photographs demonstrate the applicant's purported residence in this country after the date of the termination of the original legalization application period on May 4, 1988. Further, as neither the date nor location of the remaining photograph is discernible, this photograph cannot be considered as probative in determining the credibility of the applicant's claim of residence in this country from prior to January 1, 1982.

The applicant provided four original photographs showing him in various locations in New York City. However, as the date of such photographs cannot be readily ascertained, these photographs cannot be considered as probative evidence of the applicant's claim of residence in this country for the requisite period.

On April 29, 2006, the district director issued a notice of intent to deny to the applicant informing him of CIS's intent to deny his application because he failed to submit sufficient evidence of continuous unlawful residence in the United States from January 1, 1982 through May 4, 1988. Specifically, the district director questioned the authenticity of the "OCT 1988" date stamp contained on three of the four photocopied photographs discussed above. As noted above, the authenticity of such date stamps is irrelevant to the applicant's claim of residence in the United States in the requisite period because the photographs and date stamps relate to the applicant's purported residence in this country after the date of the termination of the original legalization application period on May 4, 1988. In addition, the district director noted that [REDACTED] the affiant who provided an affidavit in support of the applicant's claim of residence in this country since prior to January 1, 1982, had failed to provide any evidence that he had resided in the United States during the period in question. The affidavit provided by [REDACTED] lacks specific and verifiable testimony that would tend to corroborate the applicant's claim of residence in the United States since prior to January 1, 1982. The applicant was granted thirty days to respond to the notice. The record shows that the applicant failed to respond to the notice.

The district director determined that the applicant failed to submit sufficient evidence demonstrating his residence in the United States in an unlawful status from prior to January 1, 1982 and, therefore, denied the Form I-687 application on September 15, 2006.

On appeal, the applicant asserts that no attempts have been made to contact the affiant, [REDACTED] who provided the only supporting document in the record and verify his testimony. The applicant contends that he could not obtain further documentation to support his claim of residence in this country because of his status as an illegal alien during that period. While it is acknowledged that it may be difficult to obtain supporting documentation relating to a period when the applicant was purportedly residing in this country as an undocumented alien, such status is insufficient to explain the fact that the applicant failed to provide evidence containing

sufficiently detailed and verifiable to corroborate his claim of residence in the United States in the requisite period. Although the applicant notes that no attempt has been made to verify the content of testimony contained in the one supporting document, he fails to advance any compelling reason as to why any attempt should be made in light of the minimal probative value of this affidavit.

The absence of supporting documentation that provides relevant and material testimony to corroborate the applicant's claim of continuous residence for the 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. The applicant has failed to submit sufficient documentation to meet his burden of proof in establishing that he has resided in the United States since prior to January 1, 1982 by a preponderance of the evidence as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M-*, 20 I&N Dec. at 77.

Given the applicant's failure to provide sufficient independent evidence to corroborate his claim of residence 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 as required under section 245A(a)(2) of the Act. 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.