



U.S. Citizenship
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FILE: [REDACTED] Office: New York
MSC 05 181 10583

Date: FEB 01 2007

IN RE: Applicant: [REDACTED]

PETITION: 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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter 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, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The 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 applicant reiterates his claim of residence in this country since prior to January 1, 1982 and states that he was only absent from the United States on one occasion from June 20, 1987 to July 25, 1987 during the requisite period. The applicant asserts that he is attempting to obtain further documentation to support his claim of residence in this country.

An applicant for temporary residence 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. *See* section 245A(a)(2) of the Immigration and Nationality Act (Act), 8 U.S.C. § 1255a(a)(2) 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).

8 C.F.R. § 245a.2(d)(3)(v) states that attestations by churches, unions, or other organizations to the applicant's residence by letter must: identify applicant by name; be signed by an official (whose title is shown); show inclusive dates of membership; state the address where applicant resided during membership period; include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; establish how the author knows the applicant; and, establish the origin of the information being attested to.

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 March 30, 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 [REDACTED] and [REDACTED]. Furthermore, the applicant failed to list any information at part #31 of the Form I-687 application where applicants were asked to list all affiliations or associations with clubs, organizations, churches, unions, business, etc. In addition, at part #33 of the Form I-687 application where applicants were asked to list all employment in the United States dating back to January 1, 1982, the applicant listed [REDACTED] [REDACTED] to indicate when such employment occurred.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted an employment letter that is signed by [REDACTED] provided the applicant's current address and declared that the applicant worked for him on a part-time basis as a handyman from 1981 to 1985. While [REDACTED] attested to the applicant's employment from 1981 to 1985, he failed to provide any testimony relating to the applicant's residence in the United States from 1986 to 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.

The applicant included an affidavit signed by [REDACTED] who provided the applicant's most current address and stated that he sometimes worked with the applicant from 1981 to 1983. However, Mr. [REDACTED] did not provide any specific and direct information, such as the employer with whom he and the applicant worked together or the applicant's address(es) of residence in the United States, that would support the applicant's claim of residence in this country for the period in question.

On August 18, 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. In addition, the district director noted that the applicant had been interviewed on July 20, 2006 and cited specific questions asked by the interviewing officer and responses provided by the applicant during the course of this interview. However, the record does not contain the interview notes of the officer who conducted the interview on July 20, 2006, to reflect specific questions that were asked during the interview or responses that were provided by the applicant. Therefore, the district director's conclusions regarding the credibility of the applicant's claim of residence based upon purported information obtained at this interview must be considered questionable as such conclusions are unsupported and not corroborated by the evidence contained in the record. The applicant was granted thirty days to respond to the notice.

In response, the applicant submitted two new affidavits signed by [REDACTED] respectively, both of whom reiterated the testimony contained in their previous affidavits. However, neither [REDACTED] provided any new testimony to corroborate the applicant's claim of residence in the United States for the period in question.

The applicant included a letter containing the letterhead of the Bangladesh Society Inc., New York in Elmhurst, New York that is signed by the secretary of this organization [REDACTED]. In his letter, [REDACTED] testified that the applicant maintained membership in this organization from 1981 through the present. Although [REDACTED] provided the applicant's most current address, he failed to include any of the applicant's addresses of residence during the entire period that the applicant was a member of this organization as required under 8 C.F.R. § 245a.2(d)(3)(v). In addition, it must be noted that the applicant failed to provide any explanation as to why he did not list his membership in the Bangladesh Society Inc., New York at part #31 of the Form I-687 application where applicants were asked to list all affiliations or associations with clubs, organizations, churches, unions, business, etc.

The district director determined that the applicant had failed to submit sufficient evidence establishing his continuous residence in this country since prior to January 1, 1982, and, therefore, denied the application on September 26, 2006.

On appeal, the applicant asserts that no attempts have been made to contact the affiants who provided the supporting document in the record and verify the testimony contained in such documentation. 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 and the frequency with which he has moved over the years. 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 information 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 his supporting documents, he fails to advance any compelling reason as to why any attempt should be made in light of the minimal probative value of these affidavits.

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.