



U.S. Citizenship
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Services

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FILE: [REDACTED]
MSC-05-232-13568

Office: NEW YORK

Date: JUL 24 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.

A handwritten signature in 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 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 of May 5, 1987 to May 4, 1988. Therefore, the director determined 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, counsel for the applicant submitted a copy of a notarized statement attesting to the applicant's residence in the United States during the requisite period.

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 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. 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 alien 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, 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 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. 8 C.F.R. § 245a.2(d)(5).

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 filed a Form I-687, Application for Status as a Temporary Resident, and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, with CIS on May 20, 2005. The applicant signed these forms under penalty of perjury, certifying that the provided information is true and correct. Part 30 of the application requests the applicant to list all of his residences in the United States since his first entry. The applicant responded that he resided at [REDACTED] New York, NY from 1981 until 1985 and [REDACTED] Bronx, NY from 1985 until 1989. Part 33 of the application requests the applicant to list his employment in the United States since his entry. The applicant responded that he has been self-employed as a vendor in New York, NY since 1981. Although this information indicates that the applicant has continuously resided in the United States during the requisite period, he has not provided relevant, probative and credible evidence to corroborate this claim.

To meet his burden of proof in this proceeding, an applicant must provide evidence of eligibility apart from his or her own testimony. 8 C.F.R. § 245a.2(d)(6). 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 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 applicant submitted in support of his claim of continuous residence during the requisite period, a copy of a notarized statement from

[REDACTED] a letter from [REDACTED], and a letter from [REDACTED] Chairman, Asanteman Cultural and Educational Fund, Inc.

The notarized statement from [REDACTED] dated April 24, 2006, provides a list of the applicant's addresses in the United States from 1981 until present. The statement is deficient in two respects. This statement fails to give any information on the relationship between [REDACTED] and the applicant, such as the date of their first meeting and how they came to know each other. It also fails to provide information on the extent of [REDACTED]'s contact with the applicant during the requisite period.

The letter from [REDACTED] provides, "[t]his is to certify that I have known the above name [sic] person since 1981. We met in a Grocery store and we have been great friends since then. [REDACTED] used to live at [REDACTED] NY New York [sic]. Before he left to the Bronx in 1985 [sic]." This letter contains similar deficiencies. The letter fails to give any information on the relationship between [REDACTED] and the applicant, other than stating that they met at a grocery store. This letter fails to provide details on [REDACTED]'s first meeting with the applicant in 1981 and their subsequent friendship. Notably, it fails to provide any information on the extent of [REDACTED]'s contact with the applicant during the requisite period.

The letter from the [REDACTED] Chairman, Asanteman Cultural and Educational Fund, Inc. provides, "I write to certify that [REDACTED] has been an active member of above association [sic] since 1981. He was the leader of the mens [sic] dancing group from 1981 to 1985. Any courtesies extended to him may be appreciated." The regulation at 8 C.F.R. § 245a.2(d)(3) provides guidelines for attestations by organizations. These guidelines state that the attestations should identify the applicant by name, be signed by an official, show inclusive dates of membership, state the address where the applicant resided during the membership period, include the seal of the organization, establish how the author knows the applicant, and establish the origin of the information being attested to. The letter from [REDACTED] fails to follow the delineated guidelines. This letter fails to provide the applicant's address during the membership period. It fails to explain how [REDACTED] knows the applicant and has knowledge of his residence in the United States. It also fails to establish the origin of the information provided by [REDACTED]. Moreover, the director's Notice of Intent to Deny (NOID), dated March 17, 2006, provides, "according to New York State records, Asanteman Cultural and Educational Fund, Inc. did not exist until 12/5/89." The applicant was given thirty (30) days to respond to the NOID, however he failed to provide any type of response. Furthermore, neither the applicant nor his counsel addressed this issue on appeal.

The sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6). Due to the above noted deficiencies, the documentation submitted by the applicant can at best be given minimal weight as corroborating evidence. Therefore, the applicant has not met his burden of proving by a preponderance of the evidence that he has resided in the United States during the requisite period, pursuant to 8 C.F.R. § 245a.2(d)(5).

In conclusion, 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 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 with the Service, 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.