



U.S. Citizenship
and Immigration
Services

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[REDACTED]

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FILE: [REDACTED]
MSC 05 292 15597

Office: NEW YORK

Date: **JUL 31 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, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district 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 district 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 asserts that the applicant has submitted sufficient proof of his residence in the United States during the requisite period. Counsel submits copies of documents previously submitted in support of the applicant's claim.

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, 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. 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 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 CIS on July 19, 2005. At part #30 of the Form I-687 application, where applicants are instructed to list all residences in the United States since first entry, the applicant indicated that he had resided at “[redacted] Flushing, New York” since April 1981.

At his interview with a CIS officer on March 8, 2006, the applicant stated that he first entered the United States from Canada on April 14, 1981.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted a photocopy of the biographic page of his Malaysian passport issued in Melaka, Malaysia, on August 19, 1996, along with a photocopy of a visa page from his passport bearing United States nonimmigrant B-1/B-2 visa number 014061 issued in Kuala Lumpur on May 15, 1985. The same page bears a United States immigration stamp indicating that the applicant was admitted to the United States on July 8, 1985 as a nonimmigrant visitor.

He also submitted a letter dated February 8, 2006, from [REDACTED] of Flushing, New York. [REDACTED] stated that the applicant had been her tenant since January of 1988. She did not provide the address of the residence the applicant rented from her.

The applicant included a letter dated February 27, 2006, from [REDACTED], who identified himself as the president of the Tai Chi Group of the Queens Botanical Garden in Flushing, New York. Mr. [REDACTED] stated that he had known the applicant "for 20 years," or sometime in 1986. [REDACTED] did not provide any information as to how he met the applicant, the frequency of his contact with the applicant, or the applicant's addresses in the United States during the requisite period.

The applicant also included a letter dated February 14, 2006, from [REDACTED] owner of Mountain Dragon Restaurant in Snowmass Village, Colorado. [REDACTED] stated that the applicant had worked at his restaurant as a winter season line cook for the ski seasons of 1985-1990. [REDACTED] did not list the applicant's addresses in the United States during the period when the applicant worked for him, nor did he specify the inclusive dates the applicant worked for him during each ski season from 1985 through May 4, 1988.

The applicant provided a letter dated February 8, 2006, from [REDACTED]. [REDACTED] stated that he had known the applicant "for more than twenty-five years." [REDACTED] explained that he first met the applicant at the First Baptist Church in Flushing, New York, during a Thanksgiving gathering in 1981. However, [REDACTED] did not provide any information regarding the frequency of his contact with the applicant or the applicant's addresses in the United States during the requisite period.

The applicant also provided a letter dated February 21, 2006, from [REDACTED]. [REDACTED] stated that he had known the applicant since June of 1981. [REDACTED] stated, "He was referred to me by a family friend. [REDACTED] stayed in my home for a couple of weeks during mid April of 1981." However, [REDACTED] did not provide the applicant's addresses in the United States during the requisite period. Nor did he provide any information as to the frequency of his contact with the applicant.

The applicant included two remittance receipts from the Bank of China indicating that the applicant transmitted money to a recipient in Malaysia on December 8, 1981 and November 21, 1982.

On March 14, 2006, the district director issued a notice informing the applicant of her intent to deny the applicant because he had not submitted sufficient evidence to corroborate his claim of continuous residence in the United States during the requisite period. The district director granted the applicant 30 days to submit additional evidence to corroborate his claim.

Counsel, in response, reiterated the applicant's claim of continuous residence in the United States during the requisite period. Counsel submitted photocopies of documents previously submitted and various photos of the applicant. Only one of the photos, representing the applicant at the entrance to

the 1987 U.S. Open Tennis Tournament, contains a detail that would date the picture to a specific year. The others could have been taken at any time.

On appeal, counsel once again reiterates the applicant's claim of continuous residence in the United States during the requisite period and asserts that the applicant has submitted credible affidavits and evidence to corroborate his claim. Counsel submits copies of documents previously submitted in support of the application.

In summary, the applicant has provided two money transfer receipts that would appear to place him in the United States in 1981 and 1982 and a photo that would appear to place him in the United States in 1987, but these documents are not sufficient to corroborate the applicant's claim of continuous residence in the United States *throughout* the requisite period. He has also submitted attestations from five people concerning that period, none of which contain sufficient verifiable information to corroborate the applicant's claim.

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 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.