



U.S. Citizenship  
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FILE: [REDACTED]  
MSC 05 197 10086

Office: DETROIT

Date: JUN 08 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: SELF-REPRESENTED

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 black ink, appearing to be "R. 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. [REDACTED] (C.D. Cal) February 17, 2004, (CSS/Newman Settlement Agreements) was denied by the District Director, Detroit, Michigan, 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 (the Service), now Citizenship and Immigration Services (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, repeats his claim of eligibility for temporary resident status. The applicant states that his father, who had all the evidence relating to his continuous residence in the United States during the requisite period, had passed away. The applicant submits an affidavit in support of his 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 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 April 15, 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 resided at [REDACTED] from March 2003 to December 2004. The applicant did not list any residence in the United States prior to March 2003. At block #32, where applicants are instructed to list all absences outside the United States, the applicant stated that he returned to Niger in August 1985 because his parents had both died, and that he returned to the United States in January 2003.

During his legalization interview, the applicant told the interviewing officer that he left the United States in 1983 to return to Niger and that he didn't return to the United States until January 16, 2003.

The applicant submitted a photocopy of a visa page from his passport bearing a United States nonimmigrant F-1 student visa and a United States immigration admission stamp indicating that the applicant was admitted to the United States on January 16, 2003, as a nonimmigrant F-1 student destined to attend Kent State University. The applicant was authorized to remain in the United States for the duration of his studies. The applicant did not, however, submit any evidence to establish his continuous residence in the United States during the requisite period.

On November 15, 2005, the applicant was requested to submit additional evidence to establish his continuous residence in the United States from prior to January 1, 1982 to the date he attempted to file a Form I-687 in the original legalization application period between May 5, 1987 to May 4, 1988. The applicant, in response, stated that his father had in his possession any documents relating to his residence in the United States during the requisite period, but his father had passed away.

On appeal, the applicant submits a letter dated March 4, 2006, from [REDACTED] of Kalamazoo, Michigan, stating that the applicant and his parents were in this country "in [the] 1980's." Mr. [REDACTED] explained that he met the applicant's family at the Christian Life Center and states, "I don't know exactly where they were living at or for how long they were in the country, but I do know they were here in the 1980's." Mr. [REDACTED] specifically stated that he couldn't attest to the applicant's dates of residence in the United States. Mr. [REDACTED] was only able to state that he met the applicant and his parents in the 1980's. Therefore, this letter is not sufficient to establish the applicant's continuous residence in the United States during the period in question.

The applicant did not list any residence in the United States prior to 2003 on the Form I-687. He stated during his legalization interview that he lived in the United States "in the 1980's" but returned to his country in 1985 after his parents both passed away. The applicant has not advanced a claim, or provided any evidence to establish, that he entered the United States prior to January 1, 1982, or that he resided in the United States continuously from prior to January 1, 1982 through the date he attempted to file a Form I-687 during the original legalization period ending on May 4, 1988. Indeed, the applicant told the interviewing CIS officer that he left the United States in 1985 because both his parents had died, and didn't return to this country until 2003.

The absence of sufficiently detailed supporting documentation that provides testimony 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. The applicant has failed to submit sufficient credible 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 statement that he was outside the United States from 1985 to 2003 and his 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 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.