



U.S. Citizenship  
and Immigration  
Services

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LL

[REDACTED]

FILE: [REDACTED]  
MSC-05-231-15655

Office: Hartford

Date: JUN 21 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, Hartford, Connecticut, 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 asserts that the applicant is eligible for temporary resident status pursuant to the CSS/Newman Settlement Agreements.

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. 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.

On appeal, counsel for the applicant acknowledges that the applicant has not resided in the United States during the requisite period. Counsel asserts that the applicant is eligible for CSS/Newman class membership based on his father's presence in the United States during the requisite period and his father's attempt to file an application for legalization during the original legalization application period. Counsel's statement provides the following analysis of the applicant's eligibility for class membership:

Alien specifically testified at the time of the interview, through his interpreter, that he entered on March 2002, it was his father who entered in 1981 after being present in the United States on 1980. [REDACTED]'s application is based on his father's presence and application from 1988. The CSS and Newman (LULAC) settlement agreements establish that the Alien (or parent or spouse) must have been present in the U.S. and made and application for legalization between May 5, 1987 and May 4, 1988. Based on [REDACTED]'s testimony, his father had been present in the United States at the precise dates and opportunely attempted to file an application. Pursuant [sic] the CSS and Newman (LULAC) settlement agreements, it appears that [REDACTED] is eligible under his father's application.

Counsel's focus on issues related to the applicant's class membership application is irrelevant for this proceeding since the director's decision to deny the application is not based on deficiencies

in the applicant's class membership application. The director's denial is instead based on the applicant's failure to provide evidence of continuous residence in an unlawful status during the requisite period to establish his eligibility for temporary resident status. The applicant's burden of proving by a preponderance of the evidence his continuous residence in the United States during the requisite period is a requirement distinct from the establishment of class membership. *See* 8 C.F.R. § 245a.2(d)(5).

The CSS/Newman Settlement Agreements allow individuals who meet certain requirements to apply for reapply for temporary resident status under Section 245A of the Act. *See* U.S. Citizenship and Immigration Services, Press Release, *Federal Courts Approve Settlements in CSS and LULAC (Newman) Legalization Cases*, March 23, 2004. However, "[a] determination that an applicant is a class member is not binding in any manner on Defendants [U.S. Department of Homeland Security] for the purposes of an adjudication on the merits of the application for temporary residence which shall be conducted de novo." CSS Settlement Agreement paragraph 6 at page 4; Newman Settlement Agreement paragraph 6 at page 6. The director found in adjudicating the merits of the application that the applicant did not meet the eligibility requirements for temporary residency. This proceeding will, therefore, focus on the applicant's eligibility for temporary resident status under Section 245A of the Act.

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). The issue to be addressed in this proceeding is whether the applicant has demonstrated his continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the date he (or his father) attempted to file a Form I-687 application with the Service during the original legalization application period of May 5, 1987 to May 4, 1988.

Documentation in the applicant's record indicates that he first entered the United States in March 2002. As noted above, counsel for the applicant also maintains that the applicant entered the United States in March 2002. The applicant submitted a Form I-687, Application for Status as a Temporary Resident, on May 19, 2005. Part 30 of this application requests applicants to list all of their residences in the United States since their first entry. The applicant reported his first residence as [REDACTED], Farmingham, Massachusetts, from April 2002 until May 2002. Part 33 of this application requests applicants to list their employment history in the United States since their entry. The applicant reported that he was self-employed in the occupation of labor at [REDACTED] Bridgeport, Connecticut, from May 2002 until February 2003. The applicant did not provide any employment history in the United States prior to May 2002. The applicant signed his application under penalty of perjury certifying that the information contained in the application is true and correct. Additionally, the applicant and his attorney signed a sworn statement before an immigration officer during the applicant's legalization interview, which corroborates the information contained in his Form I-687 application. The applicant's sworn statement provides that his first entry into the United States was on March 31, 2002. The applicant does not claim nor does documentation in the applicant's record indicate that he has resided in the United States prior to this

date. Therefore, it can reasonably be concluded that the applicant has not continuously resided in the United States during the requisite period.

In conclusion, the applicant is ineligible for temporary resident status under Section 245A of the Act based on his failure to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the date he (or his father) attempted to file a Form I-687 application with the Service.

**ORDER:** The appeal is dismissed. This decision constitutes a final notice of ineligibility.