



U.S. Citizenship  
and Immigration  
Services

L1

**PUBLIC COPY**  
identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



FILE: [Redacted]  
MSC 05 308 11912

Office: Detroit

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:



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, 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, counsel reiterates the applicant's claim of eligibility for temporary resident status and submits additional evidence 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 Act, 8 U.S.C. § 1255a(a)(2).

An alien applying for 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).

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 August 4, 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] [REDACTED] from July 1981 to August 1990.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982 the applicant submitted a billing statement dated February 1, 2006, indicating that [REDACTED] provided dental service to the applicant on December 21, 1983. The statement indicates that the patient is [REDACTED] and the guarantor of payment is also [REDACTED]. This billing statement was not issued in 1983 when dental services were purportedly provided to the applicant, but rather in 2006. Furthermore, the billing statement indicates that the applicant is both the patient and the guarantor of payment. The applicant was nine years old at that time; hence, it is unlikely that he was the guarantor of payment.

The applicant also submitted an affidavit dated December 21, 2005, from [REDACTED] stating that he met the applicant and his mother in 1983 at a soccer game in Pontiac, Michigan. [REDACTED] further stated :

Talking together for several hours, my wife [REDACTED] and I learned that they had no permanent place to live. We then invited them to live with us until they are able to rent their own apartment. Five days later, they graciously accepted our offer to live with us in our house. [REDACTED] lived with us for the next four years. . . . With thanks and appreciation, [REDACTED] decided to move out on his own in January of 1988.

[REDACTED] statement that the applicant and his mother had no permanent home when he met them in 1983 contradicts the applicant's statement on the Form I-687 that he lived at a specific address in Pawtucket, Rhode Island, at that time. Furthermore, [REDACTED] statement that the applicant lived with him in Pontiac, Michigan, from 1983 to 1988 contradicts the applicant's statement on the Form I-687 that he lived in Pawtucket, Rhode Island from 1981 to 1990.

On February 8, 2006, 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 his Form I-687 and his continuous physical presence in the United States since November 6, 1986. The applicant, in response, submitted an affidavit dated February 18, 2006, from [REDACTED] stating that she has know the applicant and his mother since 1981. [REDACTED] explained that she met the applicant and his mother at an African Festival in Detroit, Michigan and purchased African artwork from the applicant's mother. [REDACTED] stated that since September 1983, the applicant's mother would bring the applicant with her to visit her home and show her African projects she was working on. Finally, [REDACTED] stated that she currently sees the applicant on a regular basis for hair braiding. [REDACTED] does not provide any verifiable information such as the applicant's address(es) during the period in question.

The director denied the application on March 8, 2006, because the applicant failed to establish continuous unlawful presence in the United States from prior to January 1, 1982 through the date the applicant attempted to file his Form I-687 and continuous physical presence in the United States since November 6, 1986.

On appeal, counsel reiterates the applicant's claim. Counsel submits a letter with English translation from the applicant's mother, [REDACTED] stating that the applicant traveled with her to the United States in July 1981 and that they were admitted to the United States as nonimmigrant visitors authorized to remain in the United States for one month. [REDACTED] does not submit a photocopy of her passport with United States nonimmigrant B-1/B-2 visa and United States immigration admission stamp to corroborate her statements. Nor does [REDACTED] provide any verifiable information regarding the addresses where she and the applicant resided during the requisite period.

Counsel submits medical documents relating to the applicant's absence from the United States in 1997 and copies of evidence previously submitted in support of the application.

Counsel's statements on appeal regarding the sufficiency of the evidence submitted by the applicant in support his claim of continuous residence in this country for the requisite period have been considered. However, the three affidavits submitted by the applicant relating to his residence in the United States from prior to January 1, 1982 lack sufficient detail, contain little verifiable information, and most importantly, all lack testimony regarding the applicant's continuous residence in the United States for the entire period from prior to January 1, 1982 through the date that he attempted to file a Form I-687 application with the Service in the original legalization application period between May 5, 1987 to May 4, 1988.

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 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.