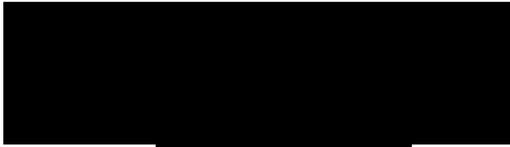


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**U.S. Citizenship
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Services**

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FILE: [REDACTED]
MSC-05-286-12930

Office: NEW YORK

Date: NOV 07 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, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined the applicant failed to prove by a preponderance of the evidence that he has resided in the United States for the requisite periods, is admissible to the United States under the provisions of section 245A of the Immigration and Nationality Act, and is otherwise eligible for adjustment of status under this section. As a result, she denied the application.

On appeal, the applicant's representative stated that the applicant provided sufficient proof of his eligibility for temporary resident status, presented additional information about the applicant's entry into the United States, and attempted to explain the applicant's failure to obtain additional documentation. The applicant also provided original documents for which he had initially only provided photocopies.

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 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 applicant 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 applicant 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 and 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.

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 Citizenship and Immigration Services (CIS) on July 13, 2005. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant listed his only address during the requisite period to be [REDACTED] New York from September 1981 to February 2005. At part #31 where applicants were asked to list all affiliations, associations, clubs, organizations, churches, unions, businesses, etc., the applicant stated, "none." At part #33 where applicants were asked to list employment in the United States since entry, the applicant listed no employment positions during the requisite period. The applicant initially provided no documentation in addition to the Form I-687 to support his claim of continuous unlawful residence.

At his interview with an immigration officer on March 6, 2006, the applicant submitted a faxed declaration from [REDACTED] the applicant's mother. [REDACTED] explained that she went to Mexico with her husband and son in January 1981. On September 12, 1981 she handed over her son to his uncle to live in America across the border without a visa. [REDACTED] stated that the applicant has been living in America since then. [REDACTED] failed to provide any details regarding the applicant's period of residence in the United States, including the addresses at which he resided. The declaration also contains no contact information for [REDACTED]. The declaration was undated, but the fax paper on which it is printed lists the dates January 20, 2006 and April 3, 2006. The paper also indicates it is a transmission verification report and states, "Busy: Busy/No Response." The fax paper lists a telephone

number and fax number with New York area codes, as well as a lengthy fax number that appears to be an international number. The fax paper appears to indicate an attempt was made to fax the declaration from New York to an overseas fax number, and the attempt was unsuccessful. The appearance that this declaration was faxed from the United States to an overseas fax number casts some doubt on its authenticity. In addition, since [REDACTED] failed to provide current contact information for herself and address information for the applicant during the requisite period, the declaration is found to lack sufficient detail.

The applicant also provided a declaration from an individual named [REDACTED] whose last name is illegible. The declarant stated that he met the applicant at a restaurant in New York called Sasafra in the summer of 1982, when the applicant worked as a bus boy and the declarant worked in the kitchen. This declaration fails to confirm the applicant resided in the United States for any part of the requisite period except the summer of 1982. In addition, this declaration is inconsistent with the information the applicant provided on Form I-687, where he did not list any employment during the requisite period.

In response to a Notice of Intent to Deny issued on March 7, 2006, the applicant provided a declaration from [REDACTED] of St. Patrick's R. C. Church. The declarant stated that the applicant "comes to Sunday mass here in St. Patrick. He is making St. Patrick his parish church." This declaration fails to confirm the applicant resided in the United States during the requisite period. The declarant failed to state when the applicant made St. Patrick his parish church. When asked to list all affiliations or associations with churches on his Form I-687 application, the applicant indicated "none."

The applicant also provided a letter dated November 30, 1981 from his mother, written in Indonesian, with English translation. This letter fails to confirm the applicant resided in the United States during the requisite period.

In denying the application, the director determined the applicant failed to prove by a preponderance of the evidence that he has resided in the United States for the requisite periods, is admissible to the United States under the provisions of section 245A of the Immigration and Nationality Act, and is otherwise eligible for adjustment of status under this section. Specifically, the director stated that the declaration from the applicant's mother appears neither credible nor amenable to verification, the applicant failed to provide documentation from his employers, and the applicant's travel history appears to indicate he may not qualify as a temporary resident due to the requirements of class membership. Since the director issued a complete decision on the merits, the director is found not to have denied the applicant's claim of class membership.

On appeal, the applicant's representative stated that the applicant provided sufficient proof of his eligibility for temporary resident status, presented additional information about the applicant's entry into the United States, and attempted to explain the applicant's failure to obtain additional documentation. It is noted that, without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The applicant also provided the original letter from his mother and declaration from his church, together with the envelope for his mother's letter.

In summary, the applicant has provided only limited contemporaneous evidence of residence in the United States relating to the 1981-88 period, in the form of a letter from 1981. The applicant has submitted declarations that lack sufficient detail, conflict with the applicant's statements, or fail to confirm the applicant's residence during the requisite period. Specifically, the declaration from the applicant's mother lacks sufficient detail. The declaration from [REDACTED] fails to confirm the applicant resided in the United States throughout the requisite period and is inconsistent with the applicant's statements. The declaration from the applicant's church and the letter from the applicant's mother fail to confirm the applicant resided in the United States during the requisite period.

The absence of sufficiently detailed and consistent 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 contradictory statements contained in the applicant's I-687 application and supporting declarations, and 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.