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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

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FILE:

MSC-05-319-10063

Office: NEW YORK

Date:

APR 14 2008

IN RE:

Applicant:

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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

A handwritten signature in black ink, appearing to read "D. King" or similar, written over a white rectangular background.

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. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant appears to be represented; however, the record does not contain Form G-28, Notice of Entry of Appearance as Attorney or Representative. Therefore, the applicant shall be considered as self-represented and the decision will be furnished only to the applicant.

The applicant submitted a Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (Act), and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet. The director determined that the applicant had not established by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status for the duration of the requisite period. The director denied the application, finding that the applicant had not met his burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, the applicant asserts that the director failed to review and accurately evaluate the affidavits that he submitted.

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 applicant must also 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). The regulations clarify that the applicant must have been physically present in the United States from November 6, 1986 until the date of filing the application. 8 C.F.R. § 245a.2(b)(1).

For purposes of establishing residence and physical presence under the CSS/Newman Settlement Agreements, the term “until the date of filing” in 8 C.F.R. § 245a.2(b)(1) means until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file during the original legalization application period of May 5, 1987 to May 4, 1988. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

The applicant has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite period, 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.* at 80. 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, 431 (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 meet his or her burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on August 15, 2005.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted the following attestations:

- An affidavit from \_\_\_\_\_ in which he stated that he is the applicant's brother and that he makes the affidavit in support of the applicant's claim of being in the United States since before January 1, 1982. He also lists the applicant's New York addresses since July of 1981. Here, the affiant fails to specify when and where he first met the applicant in the United States. The affiant also fails to demonstrate that he himself was present in the United States for the duration of the requisite period. He fails to indicate the frequency in which he saw the applicant during the requisite period. There is no evidence in the record to demonstrate that the information provided by the affiant is based upon his firsthand knowledge of the applicant's circumstances and whereabouts throughout the requisite period. Because this affidavit is significantly lacking in detail it can be accorded only minimal

weight in establishing that the applicant resided in the United States during the requisite period.

- An affidavit from [REDACTED] in which he stated that he is the applicant's cousin and that he makes the affidavit in support of the applicant's claim of being in the United States since before January 1, 1982. He also lists the applicant's New York addresses since July of 1981. Although the affiant states that he is supporting the applicant's claim of residency since before January 1, 1982, he fails to specify when and where he first met the applicant in the United States. The affiant also fails to demonstrate that he himself was present in the United States for the duration of the requisite period. He fails to indicate the frequency in which he saw the applicant during the requisite period. There is no evidence in the record to demonstrate that the information provided by the affiant is based upon his firsthand knowledge of the applicant's circumstances and whereabouts throughout the requisite period. Because this affidavit is significantly lacking in detail it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

In response to the director's request for additional evidence, the applicant submitted copies of documents addressed to [REDACTED] and dated August of 1980, September of 1983, March of 1984, and July through December of 1985. The applicant also submitted a copy of [REDACTED]'s child's New York City birth certificate dated November of 1978; and an employment letter dated March 3, 2006, in which the project assistant from NYU Hospital Center stated that the company has employed [REDACTED] since July 16, 1979.

In denying the application the director noted that the applicant failed to address the issues raised in the Notice of Intent to Deny, in that he had failed to demonstrate that the affiants [REDACTED] and [REDACTED] statements were based upon firsthand knowledge of the events and circumstances surrounding the applicant's residency in the United States.

On appeal, the applicant asserts that the director's decision was in error in that the affidavits he submitted were in compliance with statutory requirements and that they are sufficient evidence of his residence in the United States since before January 1, 1982. The applicant does not submit additional evidence.

In the instant case, although the applicant has provided evidence that the affiants were in the United States during the requisite period, he did not demonstrate that the attestations made by [REDACTED] and [REDACTED] were based upon direct personal firsthand knowledge of the circumstances and events surrounding the applicant's claimed continuous residence in the United States since before January 1, 1982.

The absence of sufficiently detailed 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 for the requisite period 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.