

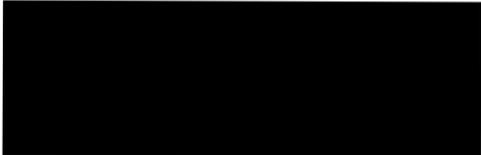
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U.S. Citizenship  
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FILE: [REDACTED]  
MSC-06-081-11888

Office: HARTFORD

Date: **AUG 18 2008**

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. 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.

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

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. Furthermore, the director determined that the applicant is not a CSS/Newman class member. 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 he entered the United States for the first time in 1980. The applicant states that his family paid an agent to bring him across the Canadian border into Buffalo, New York. The applicant states that he attempted to file an application for the CSS/Newman Settlement, but was informed he could not apply because of travel abroad. The applicant states that utility bills were not under his name because he did not have a social security number. The applicant furnishes a copy of a lease agreement as additional corroborating evidence.

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).

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) 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 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 on December 20, 2005. At part #30 of the Form I-687 application where applicants are asked to list all residences in the United States since first entry, the applicant showed his first address in the United States to be in Chicopee, Massachusetts from February 1981 until present. At part #33, he showed his first employment in the United States to be as a cashier for Sams Food Store in Chicopee, Massachusetts from February 1981 until present.

The applicant submitted the following documentation:

- A notarized letter from [REDACTED], Store Manager, Sam, S Food Stores, dated December 12, 2005. This letter states, “[t]his is to certify, that M [REDACTED] is presently working with this company and has been working since February, 1981 as Cashier. His weekly pay is \$425.” This letter fails to establish the origin of the information Mr. [REDACTED] has attested to. The regulation at 8 C.F.R. § 245a.2(d)(3)(i) provides, in pertinent part, that letters from employers must include: the alien’s address at the time of employment; duties with the company; whether or not the information was taken from official company records; and where records are located and whether the Service may have access to the records. The regulation further states that an affidavit stating the reason the applicant’s employment records are unavailable may be provided in lieu of such records. *See* 8 C.F.R. § 245a.2(d)(3)(i)(F). Mr. [REDACTED]’s letter fails to comply with this regulation. Therefore, it is of little probative value as evidence of the applicant’s residence in the United States during the requisite period.
- An affidavit from [REDACTED] dated November 22, 2005, which states, “I first met . . . Mr [REDACTED] at Minit Mart Convenience store located at 109 Dean Rd Clarksville TN 37040 in the years 1980-1982 and have known him to be residing [sic] in the United States for the most part of our acquaintance.” This affidavit indicates that the applicant resided in Clarksville, Tennessee from 1980 until 1982. However, the applicant showed on his Form I-687 that he first resided in the United States in February 1981 in Chicopee, Massachusetts and he remained at that location throughout the requisite period. Moreover, the affidavit fails to convey Mr. [REDACTED]’s direct personal knowledge of the applicant’s residence in the United States from 1980 until 1982. Given these deficiencies, this affidavit is without any probative value as evidence of the applicant’s residence in the United States during the requisite period.
- An affidavit from [REDACTED] dated November 22, 2005, which states, “I first met with [REDACTED] at Minit Mart Convenience store located at 109 Dean Rd Clarksville TN 37040 in the years 1980-1989 and have known him to be residing [sic] in the United States for the most part of our acquaintance.” This affidavit indicates that the applicant resided in Clarksville, Tennessee from 1980 until 1989. As stated above, the applicant showed on his Form I-687 that he first resided in the United States in February 1981 and has since been a resident of Chicopee, Massachusetts. Furthermore, the affidavit fails to convey Ms. [REDACTED]’s direct personal knowledge of the applicant’s residence in the United States from 1980 until 1989. Given these deficiencies, this affidavit is without any probative value as evidence of the applicant’s residence in the United States during the requisite period.

On April 6, 2007, the director issued a notice denying the application. In denying the application, the director determined that the applicant did not prove that he resided continuously in the United States in an unlawful status since before January 1, 1982 until the date he filed his application. The director further determined that the applicant is not a CSS/Newman Class Member because he is unable to substantiate his claim of attempting to apply for legalization

during the original legalization application period. It should be noted that although the director found that the applicant failed to establish his class membership, she did not deny the application for class membership. Instead, the director, based on the applicant's class membership, adjudicated the application for temporary residence on the merits.

On appeal, the applicant asserts that he entered the United States for the first time in 1980. The applicant states that his family paid an agent to bring him across the Canadian border into Buffalo, New York. The applicant states that he attempted to file an application for the CSS/Newman Settlement, but was informed he could not apply because of travel abroad. The applicant states that utility bills were not under his name because he did not have a social security number. The applicant furnishes a copy of a lease agreement as additional corroborating evidence.

The lease agreement shows that it was issued for the period of February 1981 until January 1983. The applicant and [REDACTED] are the tenants listed on the lease agreement for their rent of [REDACTED] Chicopee, Massachusetts. However, Mr. [REDACTED]'s affidavit neglects to state that he shared an apartment with the applicant during this period. Instead, his affidavit indicates that he knew the applicant from 1980 until 1982 after meeting him in a Minti Mart Convenience store in Clarksville, Tennessee. Moreover, the lease agreement itself is not evidence that the applicant actually resided at this address from February 1981 until January 1983. It only shows that the applicant was present in the United States on the date that he signed the lease agreement. As a result, this document is of little probative value as evidence of the applicant's residence in the United States during the requisite period.

The sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6). The applicant has failed to provide probative and credible evidence of his residence in the United States during the requisite period. The applicant's documentary evidence is, at best, of little probative value as proof of his continuous residence in the United States during the requisite period. When viewing these documents either individually or within the totality, they do not establish that the applicant's claim is probably true. The applicant has been given the opportunity to satisfy his burden of proof with a broad range of documentary evidence. *See* 8 C.F.R. § 245a.2(d)(3). The applicant's failure to provide sufficient documentary evidence to establish his continuous residence in the United States during the requisite period renders a finding that he has failed to satisfy his burden of proof in this proceeding. *See* 8 C.F.R. § 245a.2(d)(5).

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, as well as the inconsistencies and contradictions noted in the record, seriously detract from the credibility of his 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 inconsistencies in the record and the lack of credible supporting documentation, it is concluded that he has failed to establish by a preponderance of the evidence that he has continuously resided in

an unlawful status in the United States for the requisite period 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.