

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

41



FILE: MSC-05-217-10339 Office: WASHINGTON Date: AUG 26 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:

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 "Robert P. Wiemann".

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, Washington. The decision is now before the Administrative Appeals Office 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. 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 is eligible for temporary resident status. The applicant states that the affiant in this case, [REDACTED], is a United States citizen who was in the United States during the statutory period and knows the circumstances of the applicant's residence. The applicant states that [REDACTED] is a credible and respectable person and his testimony should be taken into account. The applicant states that he is furnishing two additional affidavits from United States citizens.

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 May 5, 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 that during the requisite period he resided in New York, New York. The applicant listed his date of birth as August 22, 1970, indicating that he was 11 years old at the time he entered the United States.

On February 17, 2006, the director, National Benefits Center, issued a Notice of Intent to Deny (NOID) to the applicant. The NOID provides that the applicant failed to submit documentation to establish his eligibility for temporary resident status. The applicant was afforded 30 days submit additional evidence in response to the NOID. Pursuant to 8 C.F.R. § 245a.2(d)(6), to meet his burden of proof, an applicant must provide evidence of eligibility apart from his own

testimony. The regulations at 8 C.F.R. § 245a.2(d)(3) provide an illustrative list of contemporaneous documentation that may be furnished to establish proof of continuous residence in the United States during the requisite period. This list includes: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts, or letters. The applicant failed to furnish any of these documents in support of his claim of continuous residence in the United States during the requisite period.

An applicant may also submit “any other relevant document.” 8 C.F.R. § 245a.2(d)(3)(vi)(L). In response to the NOID, the applicant submitted a fill-in-the-blank affidavit from [REDACTED] dated March 13, 2006. This affidavit states that [REDACTED] first met the applicant in 1981 at “27<sup>th</sup> Street 6<sup>th</sup> Avenue.” The affidavit requests the affiant to describe how he first met the applicant. [REDACTED] responded, “I sold merchandise together with his father on the corner of 50<sup>th</sup> street and 7<sup>th</sup> avenue. We would always speak to each other every day until we became friends.” Next, the affidavit requests the affiant to describe his relationship with the applicant. [REDACTED] responded, “I undersign [REDACTED] have known [REDACTED] father since 1981 and to my knowledge he has always been a friendly hardworking man who works very hard for his family and since [sic] I have had the pleasure to call him my friend. I look at him more like my brother than my friend.” Although the affidavit requested [REDACTED] to describe how he first met the applicant and his relationship with the applicant, [REDACTED] instead discussed his first acquaintance with the applicant’s father and their subsequent relationship. Consequently, the affidavit fails to convey [REDACTED]’s direct personal knowledge of the applicant’s residence in the United States during the requisite period. Given this deficiency, the affidavit is without any probative value as evidence of the applicant’s residence in the United States during the requisite period.

On March 5, 2007, the director issued a notice to deny the application. In denying the application, the director noted that [REDACTED] failed to furnish information to establish how he has remained in contact with the applicant since he first met him and how he is aware that the applicant first met him in 1981. The director stated that no evidence was furnished to aid in establishing [REDACTED]’s claim. The director determined that the affidavit is of no weight and fails to prove the eligibility factors by a preponderance of the evidence. The director concluded that the applicant failed to establish by a preponderance of the evidence his eligibility for temporary resident status.

On appeal, the applicant asserts that he is eligible for temporary resident status. The applicant states that the affiant in this case, [REDACTED], is a United States citizen who was in the United States during the statutory period and knows the circumstances of the applicant’s residence. The applicant states that [REDACTED] is a credible and respectable person and his testimony should be taken into account. The applicant states that he is furnishing two additional affidavits from United States citizens.

Although the applicant asserts that he has furnished two additional affidavits, the record shows that he submitted one notarized letter. This letter, from [REDACTED] provides, “[t]his letter is to certify that I [REDACTED] do indeed affirm that [REDACTED] has been living in the U.S. since late 1981. I knew him through his father who was my friend and whom I use to do business with. . . .” This letter fails to establish the origin of the information [REDACTED] has attested to. There is no information on the circumstances of how [REDACTED] first became acquainted with the applicant. Nor is there any information on their relationship in the United States during the requisite period. Furthermore, the letter does not convey the type of business [REDACTED] was engaged in with the applicant’s father. Given the significant lack of detail, this letter is without any probative value as evidence of the applicant’s residence in the United States during the requisite period.

In summary, the applicant has failed to provide credible, reliable and probative evidence of his residence in the United States during the requisite period. The applicant has not provided sufficient evidence to establish that he entered the United States prior to January 1, 1982. Nor has he established that he has resided in the United States during the requisite period. The applicant has been given the opportunity to satisfy his burden of proof with a broad range of evidence. *See* 8 C.F.R. § 245a.2(d)(3). The applicant submitted as evidence of his residence in the United States during the requisite period, an affidavit from [REDACTED] and a notarized letter from [REDACTED]. As discussed, both of these statements are without any probative value. Pursuant to 8 C.F.R. § 245a.2(d)(6), the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. Since the applicant’s documentation is without any probative value, he has not furnished sufficient evidence to meet his burden of proof in this proceeding.

In this case, the absence of credible and probative documentation to corroborate the applicant’s claim of continuous residence for the entire requisite period seriously detracts 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 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.