



U.S. Citizenship
and Immigration
Services

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[REDACTED]

LI

FILE: [REDACTED]
MSC 05 091 19644

Office: NEW YORK

Date:

FEB 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:

[REDACTED]

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, Newark. 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, on December 31, 2004. The director determined that the applicant had not established by a preponderance of the evidence that she had continuously resided in the United States in an unlawful status for the duration of the requisite period. In denying the application, the director noted that the applicant had failed to provide additional evidence in response to a Notice of Intent to Deny issued on July 1, 2005. The director denied the application as the applicant had not met her 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, counsel for the applicant asserts that the applicant submitted additional evidence in response to the NOID on August 2, 2005, and therefore the director's denial was erroneous and should be reversed. The applicant submits a copy of an affidavit from [REDACTED], bearing a date stamp from the Citizenship and Immigration Services (CIS) New York District Office. It is noted that this same affidavit was previously submitted in support of the applicant's initial application filing.

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).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), "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 during the original legalization 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 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. 8 C.F.R. § 245a.2(d)(5).

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 applicant 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 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 a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to Citizenship and Immigration Services (CIS) on December 31, 2004. The applicant signed this application under penalty of perjury, certifying that the information is true and correct. 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 indicated that she resided at [REDACTED] in Bronx, New York from February 1998 to the present. The applicant did not indicate on her Form I-687 that she continuously resided in the United States during the requisite period.

The applicant has the burden of proving by a preponderance of the evidence that she has resided in the United States for the requisite period. 8 C.F.R. § 245a.2(d)(5). To meet her burden of proof, an applicant must provide evidence of eligibility apart from her own testimony. 8 C.F.R. § 245a.2(d)(6). The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that an applicant may submit 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. An applicant may also submit any other relevant document pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The applicant submitted a copy of her New York State learner permit issued on May 6, 2005 and a copy of her passport as proof of her identity. In support of her claim of continuous residence in the United States, the applicant submitted a notarized letter from [REDACTED] a resident of New York, New York, who stated that he has known the applicant since 1982 in New York City, "shortly after her arrival in 1981." He stated that he is a friend of the applicant and that they have shared social events such as birthday parties and holidays. The affiant does not state how he dates his acquaintance with the applicant, or how frequently he had contact with her during the requisite period, nor does he specifically state that she continuously resided in the United State during the relevant period. [REDACTED] did not provide any specific, relevant details regarding the events and circumstances of the applicant's residence that would lend credibility to his statement that he has been a good friend to the applicant for more than 20 years. He also does not appear to have personal knowledge that the applicant arrived in the United States prior to January 1, 1982. Although not required to do so, it is noted that the affiant did not provide proof of his identify, proof of his relationship with the applicant, or evidence that he was in the United States during the requisite period. Because the affidavit is significantly lacking in detail, its probative value is limited.

On June 13, 2005, the applicant was interviewed by a CIS officer in connection with her application. The applicant claimed to have resided continuously at her current address since November 1981. As noted above, the applicant indicated on her Form I-687 that she had lived at the same address only since 1998. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The applicant submitted no additional evidence in support of her claim of continuous residence.

The director issued a Notice of Intent to Deny to the applicant on July 1, 2005, advising the applicant that based on the paucity of evidence in the record, she had failed to meet her burden of proof for the benefit sought. It is noted that the district director incorrectly applied the regulation at 8 C.F.R. § 103.2(b) in evaluating the instant application and supporting evidence. Nevertheless, the district director's actions must be considered to be harmless error as the AAO conducts a de novo review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.2(d)(6).

The applicant was afforded 30 days in which to submit additional evidence. The director denied the application for the reasons stated in the Notice of Intent to Deny on August 3, 2006, noting that the applicant had failed to submit additional evidence in rebuttal to notice.

On appeal, counsel for the applicant submits evidence that the applicant did in fact submit a response to the Notice of Intent to Deny; however, the only evidence she submitted was a photocopy of the affidavit from [REDACTED]. The applicant provides no new documentary evidence on appeal.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the requisite period, and has submitted an attestation from only one person concerning that period. However, the affidavit from [REDACTED] does not corroborate the applicant's claim that she

entered the United States prior to January 1, 1982. Furthermore, as discussed above, the affidavit is significantly lacking in detail and is lacking in probative value when considered in light of the totality of the evidence of record.

An applicant's failure to provide documentary evidence apart from affidavits cannot be the sole reason for the denial of an application. However, an application that is lacking in contemporaneous documentation cannot be deemed approvable if considerable periods of claimed continuous residence rely entirely on affidavits that are lacking in credibility. Again, the only affidavit submitted did not contain sufficient substantive information or relevant testimony pertaining to the applicant's claim of continuous residence for the entirety of the requisite period.

As is stated above, 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). The applicant has been given the opportunity to satisfy his burden of proof with a broad range of evidence pursuant to 8 C.F.R. § 245a.2(d)(3). The absence of sufficiently detailed, probative 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 applicant's reliance upon a single affidavit with minimal probative value, it is concluded that she 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.