



U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED]  
MSC-05-231-14793

Office: BOSTON

Date: JAN 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: Self-represented

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, Boston. 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 she 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 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. The director also raised the issue of class membership in the decision. However, since the director considered the application for temporary resident status on the merits, he is found not to have denied the application for class membership.

On appeal, the applicant asserted that she first entered the United States in 1981 without inspection, with her parents. The applicant stated that her parents have all the evidence they used in their original application for temporary resident status, and the applicant does not live with her parents. Since she has filed the application, the applicant has tried to collect all the evidence demonstrating her eligibility for temporary resident status. As soon as the records become available, she will submit them. The applicant also requested the decision be reviewed on humanitarian grounds and that she be allowed more time to submit additional 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)(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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that she resided in the United States for the duration of the requisite period. Here, the submitted evidence is not relevant, probative, and credible.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on May 19, 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 the following addresses during the requisite period:

- Elmhurst, New York from August 1981 to January 1982;
- Woodside, New York from February 1982 to September 1983;
- Astoria, New York from October 1983 to September 1984;
- Sunnyside, New York from October 1984 to March 1985;
- Pompano Beach, Florida from April 1985 to June 1986;
- East Elmhurst, New York from July 1986 to January 1987;

York from July 1986 to July 1987; and [REDACTED] Woodside, New York from August 1987 to December 1994. At part #31 where applicants were asked to list all affiliations or associations, clubs, organizations, churches, unions, businesses, et cetera, the applicant listed the following organizations: Pak-US Music Lover, a nonprofit organization, Queens, New York from August 1986 to present; Forum for Human Rights, Jackson Heights, New York from November 1987 to present; and Voice of Pakistan, New York, New York from December 1987 to present.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided attestations from three individuals. The applicant provided an affidavit from [REDACTED] which stated that the affiant knows it to be fact that the applicant resided at [REDACTED] Elmhurst, New York from August 1981 to January 1982. [REDACTED] identified himself as the applicant's "ex-roommate and family friend." This affidavit fails to provide detail regarding the affiant's frequency of contact with the applicant during the requisite period; how he is able to date the specific period of residence; and the date and manner in which he met the applicant. As a result, this affidavit is found to lack sufficient detail. In addition, this affidavit fails to confirm the applicant's residence during the requisite period after January 1982.

The applicant submitted an affidavit from [REDACTED], Vice President of Voice of Pakistan. This affidavit states that the applicant became a member of Voice of Pakistan on December 16, 1987. The affidavit also states, "[The applicant's] membership application states and indicates that she has been residing in the United States since August 18, 1981," yet the applicant failed to provide a copy of her membership application. In addition, the affidavit does not conform to regulatory standards for attestations by churches, unions, or other organizations as established in 8 C.F.R. § 245a.2(d)(3)(v). Specifically, the declaration does not show inclusive dates of membership, does not state the address where the applicant resided during the membership period, and does not establish how the author knows the applicant.

The applicant also provided a declaration from [REDACTED] Secretary of the Forum for Human Rights. This declaration states that the applicant became a member of the Forum for Human Rights on November 7, 1990. The declarant stated that the applicant, "is personally known to have been residing in the United States since August 18, 1981." This declaration conflicts with the information listed on the applicant's Form I-687 application, which states that the applicant began his involvement with the Forum for Human Rights in November 1987, as opposed to November 1990. In addition, the declaration does not conform to regulatory standards for attestations by churches, unions, or other organizations. Specifically, the declaration does not state the address where the applicant resided during the membership period, does not establish how the author knows the applicant, and does not establish the origin of the information being attested to. 8 C.F.R. § 245a.2(d)(3)(v). Lastly, [REDACTED] failed to explain how he is able to confirm the applicant resided in the United States since August 18, 1981, despite having indicated the applicant was not a member of the Forum for Human Rights until 1990.

In denying the application the director noted that 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.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the requisite period, and has submitted attestations from only three people concerning that period. The affidavit from [REDACTED] lacks sufficient detail. The affidavit from [REDACTED] does not conform to regulatory standards. The declaration from [REDACTED] conflicts with the applicant's Form I-687 and does not conform to regulatory standards.

The absence of sufficiently detailed 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 contradictions between the documents provided by the applicant and the statements on her Form I-687 application, and given her reliance upon documents 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.