

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

4



FILE: [Redacted]
MSC-05-364-10410

Office: NATIONAL BENEFITS CENTER

Date: JUL 02 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 "R. 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 Director, National Benefits Center. 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 and that he is admissible as an immigrant. 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 it is difficult to obtain proof that is old. The applicant furnishes documentary evidence in support of his application.

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 September 29, 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 left this entire part of the application blank. Similarly, at part #33, where applicants are asked to list their employment in the United States dating back to January 1, 1982, the applicant responded that he is self-employed and left the remainder of this part of the application blank. The applicant’s failure to complete his application undermines his own credibility as well as the credibility of his claim of continuous residence in the United States during the requisite period.

The applicant submitted in support of his application his own written statement. This statement provides:

My parent applied for a work permit under the Newman/LULAC case, and during the application period they were informed by [sic] INS officer or QDE employee that they were ineligible for legalization because they had traveled out side [sic] the United States, and returned with a visitor’s visa, and were refused an application form by the INS, or

QDA [sic]. As a result my parents were unable to apply in time. We were otherwise eligible for legalization.

The applicant failed to submit with his application any other documentary evidence to corroborate his continuous residence in the United States during the requisite period.

On November 17, 2005, the director, National Benefits Center, issued a Notice of Intent to Deny (NOID). The NOID states that the applicant failed to submit documentation to establish his eligibility for temporary resident status. 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 and his admissibility as an immigrant. The applicant was afforded a period of 30 days to furnish 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. 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 his own letter, dated December 8, 2005, which provides, "[t]he law only states that I provide a letter and a letter was sent concerning my status at that time, along with all the correct documents and government papers." This statement does not address the basis for the director's NOID. Moreover, the applicant failed to provide evidence of his eligibility apart from his own testimony, pursuant to the regulatory requirement at 8 C.F.R. § 245a.2(d)(6).

On January 18, 2008, the director issued a Notice of Decision denying the application. In denying the application, the director determined that the documentation the applicant submitted failed to overcome the grounds for denial as stated in the NOID. The director concluded that the applicant failed to provide evidence that he has continuously resided in the United States for the requisite period and that he is admissible as an immigrant. The director's assertion that the applicant has not provided evidence that he is admissible as an immigrant is an unsupported determination. Therefore, this specific part of the director's decision is withdrawn. Nevertheless, the director's action 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).

On appeal, the applicant asserts that it is difficult to obtain proof that is old. The applicant states that years ago his father and mother came to the United States and applied for amnesty. The applicant states that his parents' "did not get the papers" and returned to Brazil. The applicant states that he has been in the United States for many years and would like to use his father's application for himself. The applicant states that he has been trying to obtain proof that his father was in the United States in the 1980s. The applicant states that his house was broken into and his father's pictures, letters and death certificate were stolen. The applicant submits a crime victim's information manual from the Sheriff-Coroner's Office in Contra Costa County, California.

The applicant furnished a joint letter from [REDACTED] and [REDACTED] dated April 16, 2008. This letter provides, "... we want to testify in behalf of [REDACTED], who we have known for over 30 years. [REDACTED] is an honest and responsible person. He has always worked hard, paid his taxes and fulfilled his obligations as a good citizen. . . ." The letter fails to explain how the authors first became acquainted with the applicant and their subsequent relationship during the requisite period. Notably, the letter does not indicate that the authors first met the applicant in the United States. Given these deficiencies, this letter is without any probative value as evidence of the applicant's continuous 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 not submitted any probative and credible evidence of his residence in the United States during the requisite period. The applicant left blank the parts of his Form I-687 that request him to show his residence and employment history in the United States. The joint letter from [REDACTED] and [REDACTED] does not explain whether their 30 year relationship with the applicant was while he was residing in the United States. Moreover, the applicant has not addressed the issue of his own continuous residence in the United States during the requisite period. The applicant's assertions on appeal focus solely on his parents' residence in the United States. The applicant has the burden of proving by a preponderance of the evidence that he has resided in the United States for the requisite period. 8 C.F.R. § 245a.2(d)(5). Given these deficiencies, the applicant has not met 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 the applicant 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.