



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED]
MSC-05-050-10260

Office: NEW YORK

Date: JUN 24 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.

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, New York. 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. 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 his eligibility for temporary resident status and submits an affidavit as 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. *See* 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 or 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 Supplement to Citizenship and Immigration Services (CIS) on November 19, 2004.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided the following attestations:

- A declaration dated June 16, 2005 from [REDACTED], in which she stated that she has known the applicant in the United States and that he resided in the Bronx from January of 1984 to June 16, 2005. She indicated that she lived at [REDACTED] in the Bronx and that the applicant and his extended family lived on the same floor of the apartment building where she lived, in apartment 2C. This statement is inconsistent with the information provided by the applicant on his Form I-687 at part #30 where he listed his residence at [REDACTED] Bronx, New York, from August of 1998 to November 19, 2004. Because this declaration contains testimony that conflicts with what the applicant showed on his Form I-687 application, doubt is cast on assertions made in the declaration. Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Because this declaration is inconsistent with statements made by the applicant on his Form I-687 application, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

- An affidavit from [REDACTED] dated July 13, 2005, in which he stated that the applicant lived with him at [REDACTED], Bronx, New York, from 1985 to June of 1990. Here, the affiant fails to specify where on [REDACTED] they lived or when in 1985 the applicant began living with him. Because this affidavit is significantly lacking in detail, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.
- An affidavit dated July 13, 2005 from [REDACTED] in which he stated that the applicant lived with him at [REDACTED], New York, New York, from 1981 to 1985. Here, there is no evidence in the record to substantiate his claim. The affiant fails to provide any details of the circumstances of the applicant's residence in the United States. Because this attestation is significantly lacking in detail, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

In denying the application the director noted that the applicant could not remember his addresses during his interview with an immigration officer on June 16, 2005. The director further noted that the affidavits submitted were not amenable to verification. The director also noted that the applicant was thirteen years old when he allegedly entered the United States, but had failed to provide school records, medical records, immunization records, or an affidavit from an adult who was responsible for his care and who provided her financial support. The director also noted and the record reflects, that the applicant stated under oath at his interview with immigration officers that he entered the United States in January of 1982.

On appeal, the applicant reasserts his claim of eligibility for temporary resident status and asserts that he has submitted affidavits sufficient to substantiate his claim. The applicant submits the following attestation on appeal:

- An affidavit dated October 30, 2006 from [REDACTED] in which he states that he met the applicant at a movie and that the applicant has been present in the United States since late 1981. Here, the affiant does not specify when he met the applicant or the frequency with which he saw the applicant during the requisite period. The affiant provides no details to demonstrate that his statements are based upon his firsthand knowledge of the applicant's whereabouts and circumstances during the requisite period. Although the affiant attests to knowing the applicant since 1981, he has failed to provide any relevant and verifiable testimony, such as the applicant's places of residence in this country, to corroborate the applicant's claim of residence in the United States since prior to January 1, 1982. Because this attestation is significantly lacking in detail, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

In the instant case, the applicant has failed to provide sufficient, credible and probative evidence to establish his continuous unlawful residence in the United States since prior to January 1, 1982, and throughout the requisite period. The applicant has failed to overcome the issues raised by the director. Here, the applicant stated under oath that he entered the United States in January of 1982. The attestations submitted by the applicant are inconsistent with his statements made on his Form I-687 application and they are lacking in detail. The affidavit submitted on appeal is also lacking in detail.

Although the applicant claims to have resided in the United States since he was twelve years old, he provided neither school records nor immunization records to substantiate such claim. He also failed to provide any evidence from or about any responsible adult or guardian to indicate the circumstances of how he survived during his childhood and throughout the requisite period. The affidavits submitted are lacking in detail with respect to the affiants' relation with the applicant as a child, and the role his parents or other adult played in being responsible for him during this period.

The absence of sufficiently detailed 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 attestations that are lacking in detail and that are inconsistent with his statements made on his Form I-687 application, it is concluded that he 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.